A COMPLETE

SYSTEM OF PLEADING.

VOL. III.

A COMPLETE

SYSTEM OF PLEADING:

COMPREHENDING THE MOST

APPROVED PRECEDENTS and FORMS of PRACTICE;

CHIEFLY CONSISTING OF

SUCH AS HAVE NEVER BEFORE BEEN PRINTED:

WITH AN

INDEX to the PRINCIPAL WORK,

INCORPORATING AND MAKING IT A CONTINUATION OF

TOWNSHEND's and CORNWALL's TABLES,

TO THE PRESENT TIME;

AS WELL AS AN

INDEX of REFERENCE to all the ANCIENT and MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.

OF THE INNER TEMPLE, BARRISTER AT LAW.

——————Ne quæ Studio disposit a fideli
Intellecta prius quam sint contempta relinquas. LUCRET.

VOL. III.

CONTAINING

ASSUMPSIT AND COVENANT.

LONDON:

PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW.

1797.

THIS Volume contains the remainder of DECLARATIONS IN ASSUMPSIT, *not reducible to any diſtinct Head.* The Pleas, Replications, Rejoinders, &c. in Aſſumpſit, and an INDEX complete to the Pleas, Repliations, &c. in Aſſumpſit only, and part of COVENANT. The Index to the *Declarations* under every Head in *Aſſumpſit* is already ſubjoined to the Second Volume, and an Index to the Pleadings under the Head of Covenant will be given at the End of Covenant, which I was not able to accompliſh in this Volume.

IN the former part of the preſent Volume, there may appear to the critical Reader to be Precedents which could have been ranged under proper and diſtinct Heads, as, Aſſumpſit to *Repay Money*—againſt a *Maſter of a Ship*—and for *Contribution to Party-Walls*; but the Student will find the Precedents in their proper place in the Index, and the Pleader will perceive from peruſing the Precedent, the anomaly which juſtifies claſſing them in the number of thoſe *not reducible to any diſtinct Head. Ex. gr.* to repay "Inſurance" Money; an "action for Contribution to Party-Walls," is more aptly called by Lawyers *an Action on the Statute.* But although the Statute raiſes the duty, yet, as in the form of declaring, there is ſomething neceſ-

ſary to be averred, to have been done and performed by the plaintiff, namely, the building, &c. before he can call upon defendant to perform his part; I have thought proper to refer this and ſimilar Caſes to the Head of Anomalies. *Indebitatus Aſſumpſit* is conſidered to be the general Head for this ſort of Action, and I have given one form in the Firſt Volume, but I was then, and ſtill am at a loſs to define *Aſſumpſit General* from what Pleaders call *Special.*

AMONG the Pleas, there are four not to be found in their regular order in the body of the Work, on account of their having been communicated to me too late for a juſt arrangement, though at the time actually when they were drawn. I think, however, that the importance of them (each being novel in its kind), more particularly the Plea in Abatement, p. 295, from a Caſe now depending upon the Plea, will excuſe their irregular introduction; and in the Index this irregularity is quite obviated, as they are all (except in Abatement), to be found under their proper Titles arranged. Theſe Pleas are *Foreign Attachment*, p. 247.—*Alien and Priſoner of War*, p. 255.—*Court of Conſcience Act for Weſtminſter*, p. 258.—*By an Executor*, p. 293.

I HAD propoſed to give the Errata in the Three Volumes, and the Gloſſary, at the end of Aſſumpſit; but examining the Second and Third Volumes ſtrictly with that view, and obſerving that the Errata were comparatively few in the Second Volume to thoſe in the Firſt, and chiefly in the Margin and Notes only, and ſtill fewer in the Third Volume (the Precedents themſelves being very accurately printed, and requiring

ing little or no correction), I think it better to poſtpone both the Table of Errata and Gloſſary to the concluſion of the Civil Department of the Work:— Nor will it be attended with much delay, that I have determined to publiſh henceforward, for the accommodation and at the inſtance of the Profeſſion, a Volume of the *Civil* and of the *Criminal* Diviſion alternately; for I have now proceeded ſo far in the preparation of the Civil Branch of the Work, as to be within no very diſtant proſpect of its completion. The next Volume, which will be the Fourth Volume of the Civil Diviſion, though the Fifth of the *Work*; the Fourth Volume being, in fact, the Firſt of the Criminal Diviſion, will contain the remainder of *Covenant*, and the *Pleas in Covenant*; and likewiſe the very important HEAD in Pleading in DEBT, which laſt I ſhall explain more fully in the Fifth Volume.

IN the Action of Covenant, its Analyſis, though it be not capable of a diſtribution ſo varied as *Aſſumpſit*, it nevertheleſs in many reſpects will neceſſarily be very ſimilar. The Pleas admit of ſtill leſs diviſion, for the greateſt part follow their reſpective Declarations, with the title of the Plea at the top of the page. Thus, here the Contracts relating to Trade, Agriculture, Maſter and Servant, as on Policies, Articles of Agreement in Trade, between Maſter and *Apprentice*, Maſter and *Servant*, and their relation (not to inſtance in an infinite variety of others), are alike diviſible with application to thoſe objects, as the action upon the ſame ſort of Contracts in *Aſſumpſit*. The ground of each Action is frequently the ſame, and the whole difference is, that in Covenant the inſtrument muſt be under ſeal, and accompanied with other ſolemnities.

J. WENTWORTH.

INNER TEMPLE, *July* 1797.



ASSUMPSIT SPECIAL.

CONSIDERATIONS NOT CLASSED.

APPRENTICE FEE.

LONDON, *ff.* J. W. C complains of J. H. the elder, being, &c.: for that whereas the ſaid plaintiff now is, and for the ſpace of two years and more now laſt paſt hath been, a glazier, and the art or buſineſs of a glazier, for and during all the time aforeſaid, hath uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on, at L aforeſaid, &c.: And whereas, (1) on, &c. at, &c. in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, (2) *would take and receive* one J. H. the ſon of the ſaid defendant, into the ſervice of the ſaid plaintiff as an apprentice to learn his ſaid art, and with him after the manner of an apprentice to ſerve from thenceforth and during the term of ſeven years then next following, he the ſaid plaintiff the ſaid apprentice in the ſame art and myſtery which the ſaid plaintiff uſed by the beſt means that he could to teach and inſtruct, or cauſe to be taught and inſtructed, and to find to his ſaid apprentice meat, drink, apparel, lodging, and all other neceſſaries, according to the cuſtom of the city of London, during the ſaid term, (3) he the ſaid defendant then and there undertook, and faithfully promiſed the ſaid plaintiff, to pay unto him the ſum of ten pounds, as and for a premium or apprentice fee, or conſideration for the ſame (4): *And the ſaid plaintiff in fact ſaith, that he, confiding in the ſaid promiſe and undertaking of the ſaid defendant, ſo by him made in that behalf as aforeſaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of apprenticeſhip then and there made between the ſaid plaintiff and the ſaid J. H. the ſon, and duly executed, bearing date the ſame day and year, took and received the ſaid J. H the ſon of the ſaid defendant, into his ſervice as an apprentice to learn his art, and with him after the manner of an apprentice to ſerve from thence for and during the term of ſeven years then next following, and to teach and inſtruct, or cauſe, &c.; by reaſon*

Declaration in B. R. for money promiſed as an apprentice fee.

(1) "afterwards, to wit,"

(2) "had taken and received"

(3) "to wit, by a certain indenture of apprenticeſhip then and there made between the ſaid plaintiff and J. H. the ſon, and duly executed, bearing date the ſame day and year aforeſaid,"

(4) "when he the ſaid defendant ſhould be thereto afterwards requeſted."

reaſon whereof, and according to the tenor of his promiſe and undertaking aforeſaid, the ſaid defendant then and there became liable to pay, and ought to have paid, to the ſaid plaintiff the ſaid ten pounds above mentioned; of all which premiſes the ſaid defendant afterwards, to wit, on, &c. there had notice. And whereas (a 2d Count the ſame as the firſt, only leaving out what is in Italic and inſerting what is in the margin, and beginning at "And whereas," the ſame as in the ſeventh line of the declaration. A 3d Count for work and labour, and divers materials and other neceſſary things uſed in the buſineſs, and found and provided; *quantum meruit* accordingly; money laid out, had, and received in one Count; an account ſtated; common concluſion. Damage forty pounds.)

J. MORGAN.

Not paying the plaintiff the drawback on cyder.

KENT, *ſſ.* That in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, had theretofore, to wit, on, &c. at Maidſtone in the ſaid county of Kent, ſold and delivered to ſaid defendant divers, to wit, twenty-five pipes of a certain liquor called cyder, for exportation out of this kingdom, and the pipe containing the ſame, for a certain large ſum of money, to wit, the ſum of one hundred and ninety pounds fifteen ſhillings, therefore payable by defendant to plaintiff for the ſame, he the ſaid defendant then and there undertook, and faithfully promiſed the ſaid plaintiff, that he the ſaid defendant would in a reaſonable time export or cauſe to be exported the ſaid twenty-five pipes of liquor called cyder, and would pay to the ſaid plaintiff the drawback on the ſame (the ſaid drawback amounting in the whole to a large ſum of money, to wit, forty-five pounds), to wit, at M. in the county aforeſaid: And the ſaid plaintiff avers, that although the ſaid defendant did export a part, to wit, eleven of the ſaid pipes of the ſaid liquor, and did pay the drawback on the ſame to the ſaid plaintiff: Yet the ſaid defendant did not within a reaſonable time, or at any time whatſoever, export or cauſe to be exported, nor hath he yet exported or cauſed to be exported, the reſidue of the ſaid twenty-five pipes of liquor called cyder, although a reaſonable time hath elapſed for that purpoſe, nor hath he yet paid to the ſaid plaintiff the ſaid drawback on the ſaid reſidue, amounting to a large ſum of money, to wit, twenty-five pounds, or any part thereof, although to perform his aforeſaid promiſe and undertaking the ſaid defendant was requeſted by the ſaid plaintiff afterwards, to wit, on, &c. and often both before and afterwards, at M. aforeſaid, in the county aforeſaid; but he ſo to do, &c. (Add *indebitatus aſſumpſit* and *quantum meruit* for goods ſold and delivered; Count, three hundred pounds for money lent, laid out, &c.; and had and received; *inſimul computaſſet* for three hundred pounds; and common concluſion to four laſt Counts.) J. MORGAN.

N. B. There was another Count that the cyder was ſold to one J. B. at defendant's requeſt, but that defendant promiſed to pay the drawback on the exportation

ASSUMPSIT SPECIAL.—To REPAY MONEY, &c.*

LONDON, to wit. Thomas Hollingſworth, late of, &c. [illegible] attached to anſwer unto John Hurnall in a plea, &c.: for that whereas, in conſideration that the ſaid John, at the ſpecial inſtance and requeſt of the ſaid Thomas, had then and there bought of the ſaid Thomas divers, to wit, three horſes, at and for certain prices or ſums of money then and there paid by him to the ſaid Thomas for the ſame reſpectively, he the ſaid Thomas undertook, &c. the ſaid John, that if the ſaid John ſhould not like the ſaid horſes, any or either of them, after a reaſonable trial thereof he ſhould [illegible] liberty to return the ſame, and ſhould have the price thereof re[illegible] to him by the ſaid Thomas, upon allowing to the ſaid Thomas one guinea for each and every horſe ſo returned: And the ſaid John in fact ſaith, that after the ſale of the ſaid horſes unto him the ſaid John, to wit, on, &c. he the ſaid John proceeded to try, and had then and there a reaſonable trial of the ſame, but upon ſuch trial did then and there diſlike one of the ſaid three horſes, to wit, a horſe for which he the ſaid John, upon the aforeſaid ſale thereof unto him the ſaid John by the ſaid Thomas, paid to the ſaid Thomas a certain large price, to wit, the price of eight pounds eight ſhillings of lawful money of Great Britain, and thereupon, and becauſe of ſuch diſlike to the ſaid horſe, he the ſaid John did afterwards, and in a reaſonable ſpace of time, to wit, on, &c. return the ſaid horſe to the ſaid Thomas, who then and there took the ſaid price, and accepted of and received the ſame of and from the ſaid John, under and according to the terms of the aforeſaid ſale thereof, and although the ſaid John then and there requeſted the ſaid Thomas to repay unto him the ſaid John the aforeſaid price of the ſaid horſe, except one guinea, which the ſaid John was then and there ready and willing to allow unto him the ſaid Thomas, according to the terms of the aforeſaid ſale Yet the ſaid Thomas, not, &c. but, &c. the ſaid John in this behalf, did not then and there repay, nor hath he as yet repaid unto the ſaid John the ſaid price ſo by him paid for the ſaid horſe ſo returned as aforeſaid, after deducting thereout ſuch allowance of one guinea unto him the ſaid Thomas as aforeſaid, but he ſo to do then and there, and always from thence hitherto, hath wholly refuſed, and ſtill doth refuſe, to wit, at, &c. (Add nine Counts more. 1ſt and 2d, for the uſe and occupation of a ſtable, 3d and 4th, for cattle, goods ſold and delivered; 5th and 6th, for work and labour by himſelf and his ſervants, 7th, money laid out, lent, and advanced; 8th, money had and received; 9th, account ſtated; and common concluſion to the nine laſt Counts.) V. LAWES.

LONDON, to wit. John Hedley complains of Philip Skinner, being, &c.: for that whereas the ſaid Philip, before the mak- [illegible] being indebted to plaintiff in a 30l ſettled accounts, and agreed to give his notes for 10o[illegible] being poſſeſſed of a ſhip, another 10o[illegible] was to remain on the ſhip, and plaintiff was to [illegible] and the money to continue as lent on bottomree, and defendant to allow plaintiff 15l. [illegible] that 10o[illegible] and to repay all money paid by plaintiff in inſurance.

* And reſpecting Money lent on Bottomree.

ing the agreement hereafter next mentioned, to wit, on the fifteenth day of February A. D. 1753, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, accounted together with the said John of and concerning divers sums of money before then due and owing from the said Philip to the said John, on account of divers dealings, tradings, and transactions which had been before then had and carried on between them in the coal trade, and then being in arrear and unpaid; and that upon account, the said Philip was then and there found in arrear to the said John in the sum of two hundred and ninety pounds: And whereas the said Philip, at the time of the taking and settling of the said account, and also at the time of the making the agreement hereafter mentioned, and from thence for a long time, to wit, hitherto, hath been possessed of a certain ship or vessel called the Rebecca, or of some great part thereof, as of his own property; *and being so found in arrear, and which said ship was then and there, during all, or the greatest part, of the time aforesaid, hath been employed in trade*; and being so possessed of the said ship, or of such part thereof, and such property of the said Philip in the said ship being then, and during all the time aforesaid, of the full value of two hundred pounds and more, ‖ it was thereupon, on the same fifteenth day of February in the year aforesaid, at London aforesaid, in, &c. agreed by and between the said John and the said Philip, that the said Philip, for securing the payment of the money so due and in arrear, should then and there make and subscribe with his own hand, and deliver to the said John, a certain promissory note for the said sum of two hundred and ninety pounds, payable to the said John or his order, on demand, for value received, in cash, coals, keel dues, and custom-house charges at Newcastle; *and that the said Philip should, from the time of the making of such note, pay to the said John interest, after the rate of five pounds by the hundred, for one year, for the sum of one hundred pounds, part of the said two hundred and ninety pounds, until the same one hundred pounds should be paid to the said John by the said Philip; and that the said John should, from time to time, cause insurance to be made for one hundred pounds, on the said Philip's interest in the said ship called the Rebecca, at the expence of the said Philip, until the said one hundred pounds, parcel of the said two hundred and ninety pounds, should be paid by the said Philip to the said John; and that the said Philip should accordingly repay to the said John what monies the said John should expend in and about such insurance*; and that the said John, with respect to one hundred pounds, other part of the said two hundred and ninety pounds, should venture the same during the pleasure of the said John and Philip, on the bottom of the said ship as on the bottomree in the usual and ordinary method of lending money upon ships on bottomree, as if the said John had lent the same to the said Philip on bottomree, on the bottom of the said ship; and that the said Philip should, during such time as that one hundred pounds should so remain on bottomree as aforesaid, pay to the said John, for his risque, interest, and profit thereof, at and after the rate of fifteen pounds *by* for the one hundred pounds by the

year,

year, in reſpect thereof, the ſaid John running the uſual riſques and perils of perſons lending money on bottomree in reſpect thereof: *and the ſaid agreement being ſo made, he the ſaid John afterwards, to wit, on the ſame day and year aforeſaid, at L. aforeſaid, in, &c. at the ſpecial inſtance and requeſt of the ſaid Philip, undertook, and then and there faithfully promiſed the ſaid plaintiff, to perform and fulfil the ſaid agreement in all things therein contained on his part and behalf to be performed and fulfilled; and in conſideration thereof, he the ſaid Philip undertook, and faithfully promiſed the ſaid John, to perform and fulfil the ſaid agreement in all things therein contained on his part and behalf to be performed and fulfilled:* And the ſaid John avers, that he the ſaid Philip did then and there, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in purſuance of the ſaid agreement, make his certain note in writing called a promiſſory note, ſubſcribed with his own proper hand, bearing date the ſame fifteenth day of February in the year aforeſaid, and did then and there deliver the ſame to the ſaid John, and did thereby promiſe to pay to the ſaid John, or his order, upon demand, the ſaid ſum of two hundred and ninety pounds as for value received in cath, coals, keel duties, and cuſtom-houſe charges at Newcaſtle; and that the ſaid John, *according to*, "in purſuance" of the ſaid agreement *from time to time ſince the making of the ſaid agreement, hitherto hath cauſed inſurance to be made on the ſaid Philip's intereſt in the ſaid ſhip called the Rebecca, and in ſo doing hath paid and expended for the ſaid Philip diverſ ſums of money, in the whole amounting to a large ſum, to wit, to forty pounds, to wit, at London aforeſaid, in, &c. aforeſaid; and that the ſaid John, to wit,* on the ſaid fifteenth day of February A. D. 1753 aforeſaid, to wit, at London aforeſaid, in, &c. did venture, and from thence hitherto hath ventured, the ſaid one hundred pounds, other parcel of the ſaid two hundred and ninety pounds, on the bottom of the ſaid ſhip as on bottomree in the uſual and ordinary method of lending money upon ſhips on bottomree, and as if the ſaid John had lent the ſame to the ſaid Philip on bottomree, on the bottom of the ſaid ſhip, and during all the time aforeſaid hath run all the uſual riſques and perils of perſons lending money on bottomree in reſpect *thereof* of the ſaid one hundred pounds; and that *neither of the ſaid ſums of one hundred pounds and one hundred pounds, or any part of either of them, have or hath been yet paid by the ſaid Philip to the ſaid John; and that the ſaid ſhip ſtill remains and continues in good ſafety, and* all the voyages that have been begun by the ſaid ſhip are now ended; of all which ſaid ſeveral premiſes the ſaid Philip afterwards, to wit, on the twenty-ſeventh day of January A. D. 1755, at London aforeſaid, in, &c. had notice: Yet the ſaid Philip, not regarding his aforeſaid promiſe and undertaking, but contriving and fraudulently intending to deceive and defraud the ſaid John in this behalf, hath not yet paid to the ſaid John the ſaid one hundred pounds laſt-mentioned *two ſeveral ſums of one hundred pounds and one hundred pounds at and after the rate of five pounds for the forbearing of one hundred*

pounds for one year, or any part thereof, nor the ſaid ſum of money ſo laid out and paid by the ſaid John for making the ſaid inſurance, or any part thereof, nor the ſaid fifteen pounds by the hundred ſo continued on bottomree as aforeſaid, or any part thereof, although ſo to do he the ſaid Philip was requeſted by the ſaid J. afterwards, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid in the pariſh and ward aforeſaid; but hath hitherto wholly refuſed, and ſtill refuſes. (2d Count, after mentioning defendant's mode of being in arrear, &c.:) And whereas ſaid Philip, at the time of the taking and ſettling of the ſaid laſt account, and alſo at the time of the making the agreement hereafter next mentioned, was, and from thence for a long time, to wit, hitherto, hath been, poſſeſſed of a certain part or ſhare of a certain ſhip or veſſel called the Rebecca, then, and during all and moſt part of the time aforeſaid, employed in trade; and the ſaid P. being ſo poſſeſſed of ſuch his intereſt in the ſaid ſhip, being, during all the time aforeſaid, of the value of one hundred pounds and more; and the ſaid P. being ſo found in arrear to the ſaid J. in the ſaid ſum of one hundred and ninety pounds, it was, on the ſame day and year, &c. agreed, &c. (as before, to this mark ‖, then, omitting what is in Italic, add), and that as to one hundred pounds, parcel of the ſaid two hundred and ninety pounds, he the ſaid John ſhould venture, &c. (as before, omitting all that is in Italic, except the firſt that follows; Count upon the note; money laid out, &c., *miſimul computaſſent*, &c.

Were drawn by Mr. Warren.

Declaration againſt defendant for not paying plaintiff half the expence of the party wall between their houſes.

MIDDLESEX, to wit. S. P. complains of P. M. being, &c.: for that whereas the ſaid S. before and on, &c. to wit, at, &c. was, and from thence hitherto hath been, and ſtill is, ſeiſed in his demeſne as of fee of and in a certain meſſuage or dwelling-houſe, with the appurtenances, there ſituate, and being of a certain rate or claſs of building, alſo of and in a certain wall called a party-wall, of and belonging, and part or parcel of the ſaid meſſuage or tenement; and the ſaid Samuel being ſo ſeiſed as aforeſaid, afterwards, and whilſt he was ſo ſeiſed, to wit, on, &c. to wit, at, &c. in conſideration that the ſaid Samuel, at the ſpecial inſtance and requeſt of the ſaid Patrick, would permit and ſuffer the ſaid Patrick to make uſe of (1) *the ſaid party-wall* of the ſaid Samuel, to wit, by cutting into and putting, laying, placing, and fixing the ends of divers beams, rafters, and other timbers of and belonging to a certain meſſuage or dwelling-houſe of a certain rate or claſs of building, to wit, the ſame rate or claſs of building as the ſaid meſſuage or dwelling-houſe of the ſaid Samuel, that is to ſay, of the third rate or claſs of building, which he the ſaid Patrick was then and there about to build, and building contiguous and next adjoining to the ſaid meſſuage or dwelling-houſe of the ſaid Samuel, that is to ſay, on the (2) *north* ſide thereof, at the pariſh aforeſaid, in and upon the ſaid party-wall of the

(1) "a part, that is to ſay, two third part, of the ſaid party-wall,"

(2) "ſouth"

the ſaid S. and by keeping and continuing the ſame ſo therein, and thereon put, laid, placed, and fixed, and by building ſuch houſe adjoining to, and making uſe of the ſaid party-wall *the whole length thereof* (1), as the party-wall between the ſaid two buildings, and as the only party-wall between them, he the ſaid P. undertook, and then and there faithfully promiſed the ſaid S. to pay him a part, to wit, one moiety of the expence of building the ſaid (2) party-wall of him the ſaid Samuel, when he the ſaid Patrick ſhould be thereto requeſted: And the ſaid Samuel in fact ſaith, that he, confiding in the ſaid promiſe and undertaking of the ſaid Patrick, ſo by him made in this behalf as aforeſaid, did, after the making thereof, to wit, on, &c. ſuffer and permit the ſaid Patrick to make uſe of, and the ſaid Patrick did then and there, to wit, on, &c. at, &c. by virtue of ſuch permiſſion, make uſe of (3) the ſaid wall of him the ſaid Samuel, to wit, by then and there cutting into and putting, laying, placing, and fixing the ends of the aforeſaid beams, rafters, and other timbers in and upon the ſaid party-wall of him the ſaid Samuel, and by keeping and continuing the ſame ſo therein and thereon put, laid, placed, and fixed, and by building ſuch houſe by him the ſaid Patrick as aforeſaid, adjoining to and making uſe of the ſaid party-wall (4) *the whole length thereof*, as a party-wall between the ſaid two buildings, and as the only party-wall between them; by means of which ſeveral premiſes, and according to the tenor of the ſaid promiſe and undertaking of the ſaid Patrick ſo by him made as aforeſaid, he the ſaid Patrick afterwards, to wit, on, &c. to wit, at, &c. became liable to pay to the ſaid Samuel a part, to wit, one moiety of the expence of building the ſaid (5) party-wall of him the ſaid Samuel, and made uſe of by him the ſaid Patrick as aforeſaid: And the ſaid Samuel in fact ſaith, that the ſame then and there, to wit, on, &c. at, &c. amounted to a large ſum of money, to wit, the ſum of (6) *twelve pounds twelve ſhillings*, whereof the ſaid plaintiff then and there had notice: And whereas, &c. &c. (this Count like the laſt, only omitting what is underlined, and inſerting what is wrote in margin.) And whereas the ſaid Patrick afterwards, to wit, on, &c. at, &c. was indebted to the ſaid Samuel in the ſum of twenty pounds of lawful, &c. for the uſe and occupation of divers, to wit, two party-walls of him the ſaid Samuel, ſituate and ſtanding in the pariſh of, &c. by him the ſaid Samuel, and at his requeſt, and by the permiſſion of the ſaid Samuel, for a long time, to wit, for the ſpace of four years then elapſed, had uſed, poſſeſſed, and enjoyed; and being ſo indebted, he the ſaid Patrick, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. &c. And whereas, &c. &c. (*quantum meruit*; money laid out, &c. &c.; lent, &c. &c.; account ſtated; and common concluſion,)

V. LAWES.

(1) "of him the ſaid Samuel in part, to wit, two third parts thereof,"

(2) "part, to wit, the ſaid two third parts of the ſaid"

(3) "a part, that is to ſay, two third parts of"

(4) "of the ſaid Samuel in two third parts thereof,"

(5) "part, that is to ſay, the ſaid two third parts of the ſaid laſt mentioned"

(6) "61. 3s. 6d."

3d Count.

4th Count.

Declaration, plaintiff was poſſeſſed of a boat, which he let out to hire to defendant to bring ſome mahogany, which was on board a ſhip, aſhore; defendant told the plaintiff that the ſaid mahogany could be legally brought aſhore; but defendant not having procured the certificate for its being landed, the mahogany and boat were ſeized, &c.

PALACE COURT, to wit. Peter Dawl, by R. F. his attorney, complains of Joſ. Seddon, of a plea of treſpaſs on the caſe, &c.: for that whereas heretofore, to wit, on, &c. to wit, at, &c. and within the juriſdiction of this court, in conſideration that the ſaid Peter, at the ſpecial inſtance and requeſt of the ſaid J. had then and there let to hire to him the ſaid J. a certain boat of him the ſaid Peter, he the ſaid J. undertook, and then and there faithfully promiſed the ſaid Peter, to uſe, and that the ſaid boat, whilſt under ſuch letting to hire thereof as aforeſaid, ſhould be uſed, in a fair, reaſonable, and lawful manner: And the ſaid Peter in fact ſaith, that although the ſaid boat of him the ſaid Peter was uſed and employed by the ſaid J. under ſuch letting thereof to hire as aforeſaid: Yet the ſaid J. not regarding his ſaid promiſe and undertaking ſo by him made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid Peter in this behalf, did not then and there uſe the ſaid boat of him the ſaid Peter, nor was the ſame then and there uſed in a fair, reaſonable, and lawful manner; but on the contrary thereof, he the ſaid Peter further ſays, that whilſt the ſaid boat of him the ſaid Peter was ſo let to hire to the ſaid J. as aforeſaid, he the ſaid J. did uſe, and cauſed the ſaid boat to be uſed, in an unfair, unreaſonable, and unlawful manner, to wit, by then and there, that is to ſay, on, &c. at, &c. in the county and juriſdiction aforeſaid, putting on board, and cauſing to be put on board, the ſame, from and out of a certain ſhip or veſſel then lying and being in the river of Thames, and within the juriſdiction of this court, to be carried aſhore and laid on land, divers pieces of mahogany, which had been before then imported into this kingdom without the proper and lawful certificate or authority for the ſo unſhipping and carrying on ſhore the ſaid mahogany, commonly called a ſufferance, or certificate of ſufferage, accompanying the ſame (and without he the ſaid Peter then and there knowing that the ſaid mahogany was not accompanied with ſuch certificate or authority); whereby, and by means whereof, the ſaid boat of the ſaid Peter, together with its oars, being in the whole of a large value, to wit, of the value of nine pounds of lawful money of Great Britain, became and were liable to forfeiture and ſeizure, and were in conſequence thereof afterwards, and whilſt they were ſo employed in carrying of the ſaid mahogany as aforeſaid, to wit, on, &c. at, &c. in, &c. in due manner ſeized, taken, and carried away from the ſaid Peter, as forfeited for the cauſe aforeſaid, whereby the ſaid Peter hath not only ever ſince the ſaid ſeizure loſt the uſe of his ſaid boat and oars, and all profit, benefit, and advantage that would have ariſen and accrued to him from the ſame, and from the uſe thereof in his buſineſs of a waterman, but hath alſo been put to great trouble, inconvenience, and expence in a fruitleſs endeavour to recover the ſaid boat and oars; and the ſaid boat and oars, in conſequence and by reaſon of their being ſo uſed and ſeized as aforeſaid, became and were, and are wholly and entirely loſt unto the ſaid Peter, to wit, at, &c. in, &c. And whereas

2d Count.

alſo

alſo heretofore, to wit, on, &c. in, &c. in conſideration that the ſaid Peter, at the ſpecial inſtance and requeſt of the ſaid J. would in and by a certain other boat of him the ſaid Peter carry on ſhore, from a certain other ſhip or veſſel then lying and being in the river Thames aforeſaid, and within the juriſdiction aforeſaid, certain other pieces of mahogany, he the ſaid J. undertook, and then and there faithfully promiſed the ſaid Peter, that the ſaid laſt-mentioned mahogany might be then lawfully carried aſhore from the ſaid laſt-mentioned ſhip or veſſel in and by the ſaid laſt-mentioned boat of the ſaid Peter: And the ſaid Peter in fact further ſaith, that he, confiding in the ſaid laſt-mentioned promiſe and undertaking of the ſaid J. and not knowing but that the ſaid laſt-mentioned mahogany might be ſafely carried aſhore in and by the ſaid laſt-mentioned boat of the ſaid Peter, after the making of the ſaid laſt-mentioned promiſe and undertaking of the ſaid J. to wit, on, &c. at, &c. in, &c. had and received the ſaid laſt-mentioned mahogany into his ſaid laſt-mentioned boat, for the purpoſe of carrying the ſame on ſhore, and at the time of the ſeizure thereof, as hereafter mentioned, was proceeding and about ſo to do: Yet the ſaid Peter in fact further ſaith, that the ſaid J. did not regard his ſaid laſt-mentioned promiſe and undertaking, but did thereby then and there craftily and ſubtilly deceive and injure him the ſaid Peter in this, that the ſaid laſt-mentioned mahogany ſo put on board of the ſaid laſt-mentioned boat of him the ſaid Peter as aforeſaid, for the purpoſe aforeſaid, might not, at the time of the making of the ſaid laſt-mentioned promiſe and undertaking of the ſaid J. and at the time of the ſaid laſt-mentioned mahogany being ſo put in and on board the ſaid laſt-mentioned boat of the ſaid Peter for the purpoſe aforeſaid, be lawfully carried on ſhore in and by the ſaid laſt-mentioned boat, but it was then and there unlawful to carry the ſame on ſhore in and by the ſaid boat, by reaſon that the ſaid laſt-mentioned mahogany was not then and there accompanied with the proper and lawful certificate or authority for ſo carrying the ſame on ſhore, commonly called a ſufferance or certificate of ſufferage; whereby, and by means whereof, the ſaid laſt-mentioned boat of the ſaid Peter, together with its oars, being in the whole of a large value, to wit, of the value of nine pounds of like lawful money of Great Britain, became and were liable to forfeiture and ſeizure, and were in conſequence afterwards, and whilſt they were ſo employed in the carrying of the ſaid laſt-mentioned mahogany as aforeſaid, to wit, on, &c. at, &c. in, &c. duly ſeized, taken, and carried away from the ſaid Peter as forfeited for the cauſe aforeſaid; whereby the ſaid Peter hath not only ever ſince loſt, &c. &c. (as in firſt Count.)

And whereas heretofore, to wit, on, &c. at, &c. in, &c. in conſideration that the ſaid Peter, at the like ſpecial inſtance and requeſt of the ſaid J. and without then and there knowing but that the mahogany hereafter next mentioned might be lawfully carried on ſhore as hereafter mentioned, had then and there ſuffered and permitted the ſaid J. to load and put in and on board a certain 3d Count.

other

other boat of him the ſaid Peter, from and out of a certain other ſhip or veſſel then lying and being in the river Thames aforeſaid, within the juriſdiction aforeſaid, certain other pieces of mahogany, to be carried on ſhore in and by the ſaid laſt-mentioned boat of him the ſaid Peter, he the ſaid J. undertook, &c. that the ſaid laſt-mentioned mahogany might be then lawfully carried on ſhore from the ſaid laſt-mentioned ſhip or veſſel in and by the ſaid laſt-mentioned boat of the ſaid Peter: Yet the ſaid Peter in fact further ſaith, that the ſaid J. did not regard his ſaid laſt-mentioned promiſe and undertaking, but did thereby then and there craftily and ſubtilly deceive and injure him the ſaid Peter in this, to wit, that the ſaid laſt-mentioned mahogany ſo put on board the ſaid laſt-mentioned boat of him the ſaid Peter for the purpoſe aforeſaid, might not, at the time of the ſame ſo being put on board the ſaid laſt-mentioned boat as aforeſaid, for the purpoſe aforeſaid, or at the time of making the ſaid laſt-mentioned promiſe and undertaking of the ſaid J. be lawfully carried on ſhore in and by the ſaid laſt-mentioned boat of him the ſaid Peter, but it was then and there unlawful to carry the ſame on ſhore in and by the ſaid laſt-mentioned boat, and the ſame would not be then and there carried on ſhore in or by ſuch boat without ſubjecting the ſaid laſt-mentioned boat, together with its oars, to forfeiture and ſeizure; whereby, and in conſequence whereof, the ſaid laſt-mentioned boat and oars, being in the whole of a large value, to wit, of the value of nine pounds of like lawful money, afterwards, and whilſt they were employed in carrying the ſaid laſt-mentioned mahogany on ſhore from the ſaid laſt-mentioned ſhip or veſſel, to wit, on, &c. at, &c. in, &c. in due manner ſeized, taken, and carried away from the ſaid Peter as forfeited, whereby the ſaid Peter hath not only, ever ſince the ſaid laſt-mentioned ſeizure, loſt

4th Count. the uſe, &c. &c. (as before.) And whereas heretofore, to wit, on, &c. at, &c. in, &c. in conſideration that the ſaid J. had before then unlawfully attempted to bring on ſhore, in and by a certain other boat of the ſaid Peter, from a certain other ſhip or veſſel then lying in the river Thames aforeſaid, and within the juriſdiction aforeſaid, certain other pieces of mahogany; and alſo in conſideration that the ſaid laſt-mentioned boat of the ſaid Peter, together with its oars, had in conſequence of, and during ſuch attempt to bring on ſhore ſuch mahogany as laſt aforeſaid, become forfeited, and been in due manner ſeized, taken, and carried away from him the ſaid Peter as forfeited, he the ſaid J. undertook, &c. to pay him the value of his ſaid laſt-mentioned boat and oars when he ſhould be thereto afterwards requeſted: And the ſaid Peter in fact ſaith, that the ſaid laſt-mentioned boat and oars of him the ſaid Peter were, at the time of the aforeſaid ſeizure and forfeiture thereof, of a large value, to wit, of the value of other nine pounds of like lawful money; whereof the ſaid J. afterwards, to wit, on, &c. at, &c. in, &c. had notice, and although the ſaid laſt-mentioned boat and oars have not been as yet reſtored to the ſaid Peter, but are ſtill wholly loſt to him: Yet the ſaid John, not regard-

ing

ing his said last-mentioned promise and undertaking so by him made as aforesaid, but contriving, &c. the said Peter in this behalf, hath not as yet paid him the value of the said last-mentioned boat and oars, or any part thereof, nor as yet made him any compensation for the same, or for the aforesaid loss thereof, although so to do he the said J. was requested by the said Peter afterwards, to wit, on, &c. at, &c. in, &c.; but he so to do hath hitherto wholly refused, and still refuses. And whereas, &c. &c. (for work and labour by himself and servants.) And whereas, &c. &c. (Money laid out, expended, and paid; an account stated; and common conclusion to palace court declaration. Damages nine pounds.) V. LAWES.

5th Count.

6th Count.

LANCASHIRE, *ff.* W. W. complains of D. W. being, &c. for that whereas, before and at the time of the making of the agreement hereafter mentioned, a certain action or suit at law had been and was commenced by E. M. and E. M. against the said plaintiff in the court of our lord the king, before the king himself here, for and in respect of the erecting, placing, and continuing of certain vault stones and other materials in and across a certain drain or watercourse at the parish of, &c. in the said county of L. a certain part thereof being near to certain land of the said E. M. and E. M., also for and in respect of the removal of a certain other bank, and of certain other earth and stones on the north side of the said drain or watercourse, and near to the said land of the said E. M. and E. M. and thereby diverting the water of the said drain or watercourse out of its usual course and channel, unto and upon the said land of the said E. M. and E. M. and which said drain or watercourse had been so diverted, under an idea of right so to do, and to enable the making of a certain other drain or watercourse there for the benefit and protection of certain lands there called Langton Marsh; and the said action or suit was, at the time of making the agreement hereafter next mentioned, depending and undetermined; and being so depending, and in consideration that the said plaintiff had, in diverting of the said drain or watercourse as aforesaid, acted as a servant or labourer merely, without any interest in the said marsh called Langton Marsh, it was heretofore, to wit, on, &c. agreed by and between the said plaintiff and defendant, and the several other persons following, that is to say, A. B. C. D. &c. &c. (1) *who, together with the said defendant, were then and there respectively* owners and proprietors of *certain cattle gates and rights of pasturage in and upon* the aforesaid marsh, in manner and to the effect following, that is to say, that the said action or suit should be defended, and they the said defendant and the several other persons parties to the said agreement, did then and there respectively covenant, promise, and agree, that they and each and every of them should and would pay, and cause to be paid, in proportion to their share or shares *in the*

Declaration against defendant for not fulfilling his agreement with respect to the paying his share of the expences of a certain action which had been brought by one A. B. against the plaintiff, and which the defendant, with several other persons, agreed should be defended, and the expences paid in proportion to their shares in a marsh.

(1) "as follows"

(1) "on the marsh called L. Marsh,"

the aforesaid marsh (1) unto the said plaintiff, the several sums of money that should or might be charged on the said plaintiff in defending the said action; and the said agreement being so made, he the said defendant afterwards, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant, that he the said plaintiff would perform and fulfil the said agreement on his part, undertook, and then and there faithfully promised the said William, that he the said defendant would perform the said agreement on his part: And the said plaintiff in fact further saith, that he, confiding in the said agreement, promise, *and undertaking* of the said defendant, did, after the making thereof, go on with the defence of, and did duly, regularly, and to the best of his knowledge and ability, defend the said action or suit so commenced against him, *upon the right or ground hereinbefore alluded to, until afterwards, to wit, in Easter term in the year* 1703 *aforesaid*, when the same was *finally ended and* determined in favour of the said E. M. and E. M. who (2) *in that same term* recovered against him the said William *in the same court here, in the said action or suit*, a certain large sum of money, to wit, the sum of eighty pounds of lawful, &c. for damages and costs in the said suit; which said sum of money he the said William was afterwards, and before the exhibiting of the bill of the said plaintiff, forced and obliged to, and did in fact pay, satisfy, and discharge, to wit, at, &c.: And the said plaintiff in fact further saith, that by reason and in consequence of his defending the said action or suit and in and about the same, he the said William was also charged with, and necessarily forced and obliged to, and did in fact pay, lay out, and expend divers other sums of money, amounting in the whole to a large sum of money, to wit, the sum of one hundred and eighty one pounds over and above the said money so recovered against him as aforesaid, to wit, at, &c.; and that the proportion or share of the said defendant of the said money so charged upon and paid by him the said plaintiff as aforesaid, in respect of his share on the said marsh called Langton Marsh, at the time of the making of the aforesaid agreement, amounted to a large sum of money, to wit, the sum of nine pounds; whereof the said defendant afterwards, and before the exhibiting of the bill of the said plaintiff, to wit, on, &c. had notice; and thereby, and by reason of the several premises aforesaid, and his aforesaid agreement and promise, he the said defendant became liable to pay, and ought to have paid, to the said William the said sum of nine pounds, to wit, at, &c. And whereas, before the making of the agreement hereafter next mentioned, the said plaintiff was employed to cut, and in consequence thereof, and under an idea of a right so to do, aided and assisted in the cutting, of a certain boundary ditch adjoining on the south to the said marsh, and on the north, &c. for the benefit and protection of the said marsh called Langton Marsh; and in consequence of digging the said ditch, and what was done on that occasion, a certain other

(2) "thereupon"

2d Count.

action

action or ſuit at law was commenced and brought by the ſaid E. M. and E. M. againſt the ſaid William in the court of our ſaid lord the king before the king himſelf here; and the ſaid David and the ſeveral other perſons hereafter named, being then and there reſpectively owners and proprietors of certain cattle gates, &c. in and upon the ſaid marſh called, &c. were, as ſuch owners and proprietors, intereſted in the determination of the ſaid laſt-mentioned action or ſuit in favour of the ſaid plaintiff, and were deſirous that the ſame ſhould be defended: and thereupon afterwards, and whilſt the ſaid laſt-mentioned action or ſuit was depending, to wit, on, &c. it was agreed by and between the ſaid plaintiff and defendant, &c. &c. &c. (Go on with this Count ſame as the firſt, omitting what is in Italic, and inſerting in lieu thereof what is in the margin.) And whereas the ſaid plaintiff, before the making of the promiſe and undertaking hereafter next mentioned, was employed and concerned in the digging of a certain other boundary ditch for the protection and benefit of the ſaid marſh hereinbefore mentioned, called Langton Marſh, in which the ſaid David was then and there intereſted, and in the damming up and diverting the water of a certain other drain or watercourſe at, &c. during the digging of ſaid laſt-mentioned ditch, and to enable the digging of the ſame; and in conſequence thereof, a certain other action or ſuit at law had been and was commenced by the ſaid E. M. and E. M. againſt him the ſaid William in the court of our lord the king here, and the ſaid David was, as ſuch owner and proprietor on the ſaid marſh called, &c. as aforeſaid, intereſted in the ſaid laſt-mentioned action or ſuit being determined in the favour of the ſaid William, and was deſirous of the ſame being defended, but the ſaid William was unwilling ſo to do without being indemnified as to the coſts and conſequences of ſuch defence; and divers of the owners and proprietors of cattle gates on the ſaid marſh were willing to come into ſuch contribution or ſubſcription: and thereupon afterwards, and whilſt the ſaid laſt-mentioned action or ſuit was depending, and whilſt the ſaid William was ſo intereſted in the event thereof as aforeſaid, to wit, on, &c. in conſideration of the ſeveral premiſes aforeſaid, and alſo in conſideration that ſaid William, at the ſpecial inſtance and requeſt of the ſaid David, would go on with the defence of, and defend, the ſaid laſt-mentioned action or ſuit, he the ſaid David undertook, and then and there faithfully promiſed the ſaid William, to pay unto him all ſuch ſums of money as ſhould be charged upon him the ſaid William by or in conſequence of his ſo defending the ſaid laſt-mentioned action or ſuit, in proportion to his ſhare and intereſt on the ſaid marſh called, &c.: And the ſaid William in fact further ſaith, &c. &c. (as before. Add the common Counts; an account ſtated; and conclude.) Yet the ſaid David, not, &c. but, &c. the ſaid William in this behalf, hath not paid the ſaid ſeveral ſums of, &c. in the three firſt Counts mentioned, nor the ſeveral ſums in the three laſt Counts mentioned, or any or either of them, or any part thereof, although ſo to do, &c. &c. &c.

3d Count.

V. LAWES.

LONDON,

(a) Declaration againſt the principal coal-meters of London, for not ſending the deputy coal-meters on board ſhips whichwere arrived in the port of L. with coals, by which they were detained for a long time.

LONDON, *ff.* John Read complains of John Moore, eſquire, Joſeph Skinner, &c. being, &c: for that whereas they the ſaid defendants, before and at the ſeveral and reſpective times of the committing of the ſeveral grievances hereafter mentioned, were the principal ſea-coal-meters for and within the port of London, duly appointed to ſuperintend the unloading and admeaſurement of coals from time to time brought and imported into the ſaid port of London, and for that purpoſe to, from time to time, appoint a ſufficient number of deputy or under meters, to be from time to time, as occaſion ſhould require, ſent on board the ſeveral ſhips or veſſels from time to time bringing and importing ſuch coal into the ſaid port, to ſuperintend the unloading of ſuch ſhips or veſſels, and to duly meaſure the coals ſo thereby imported and brought into the ſaid port of London, and certain of ſuch deputy or under meters had been and were, before the committing of the ſeveral grievances hereafter mentioned, in due manner conſtituted and appointed for ſuch purpoſes as aforeſaid, to wit, at, &c.: And whereas the ſaid John Read, before and at the ſeveral and reſpective times of the committing of the ſeveral grievances hereafter mentioned, was a coal-factor, and as ſuch factor, he the ſaid J. R. before the committing of the grievance hereafter next mentioned, to wit, on, &c. imported into the ſaid port of London certain cargoes or quantity of coals of him the ſaid J. R. in and by certain ſhips or veſſels, that is to ſay, a certain cargo or quantity of coals in and by a certain ſhip or veſſel called the Ocean, whereof one William Gray was maſter, a certain other cargo or quantity of coals in and by a certain other ſhip or veſſel called the Fleet, whereof one William Taylor was maſter, and a certain other cargo or quantity of coals in and by a certain other ſhip or veſſel called the Peggy, whereof one George Venus was maſter; and having ſo imported ſuch ſeveral cargoes or quantities of coals as aforeſaid, and alſo having duly anſwered and paid the duties due and payable to his majeſty on ſuch importation thereof as aforeſaid, and being about to unload and deliver the ſaid ſeveral ſhips or veſſels of their ſaid reſpective cargoes, he the ſaid J. R. after ſuch importation of the ſaid coals as aforeſaid, and after the duties thereon had been anſwered and paid as aforeſaid, and whilſt the ſaid ſeveral ſhips or veſſels were reſpectively lying and being in the ſaid port of London in the river Thames there, with their ſaid ſeveral cargoes of coals in and on board the ſame as aforeſaid, to wit, on, &c. gave notice to the ſaid defendants of the arrival of the ſaid ſeveral ſhips or veſſels in the ſaid port of London, and of the importation of the ſaid ſeveral cargoes of coals as aforeſaid, and of the duties thereon having been anſwered and paid as aforeſaid, and then and there required them the ſaid defendants, as ſuch principal ſea-coal-meters for and within the ſaid port of L. as aforeſaid, to forthwith ſend on board ſuch ſeveral ſhips or veſſels as aforeſaid ſuch deputy or under coal meters as

(a) This declaration is in Text. See Index.

aforesaid, in order to superintend the unloading of the several cargoes of coals of him the said John Read from and out of the said several ships or vessels, and, as such deputy or under meters, to duly measure the same; and although it was then and there the duty of the said defendants, as such principal sea coal-meters as aforesaid, to accordingly send such deputy or under coal meters on board the said several ships or vessels for the purpose aforesaid; and although they the said defendants could and might have so done, to wit, at, &c.: Yet the said defendants not regarding their duty as such principal sea coal-meters for and within the said port of London as aforesaid, but neglecting the same, and contriving and intending to injure the said J. R. in this behalf, and to retard and hinder the unloading and delivery of his said several cargoes or quantities of coals so being in and out of such several ships or vessels as aforesaid, did not forthwith send such deputy or under coal-meters as aforesaid on board the said several ships or vessels, or any or either of them, but neglected and omitted so to do for a long space of time from the time of their being so required to be on board such ships or vessels as aforesaid, to wit, until the [illegible] day of the said month of December, in the year aforesaid, with respect to the said ship or vessels called the Betsey and [illegible], to wit, &c. whereby he the said J. R. was, for and during the respective times and periods hindered and prevented from, the said several cargoes of coals of him the said J. R. in and out of the said several ships or vessels, and in consequence thereof the said several ships or vessels were, during those times aforesaid, unavoidably kept and detained in the said river Thames and moorage, and he the said John Read was thereby forced and obliged to pay, and did pay, divers sums of money, amounting in the whole to a large sum of money, to wit, the sum of [illegible] pounds of lawful money of Great Britain, for and on account of such demurrage, and was, during such detention of the said ships or vessels, interrupted and impeded in the exercise and carrying on his said trade and business of a coal-factor, to wit, at, &c. &c. (There were several other Counts similar to the first, only other ships, &c. Damages one thousand pounds.)

V. LAWES.

LONDON, to wit. John Barber, late of, &c. [the parish where the premises bargained for were situated] was attached to answer Alexander Purse in a plea of trespass on the case, &c.; and thereupon the said Alexander, by A. B. his attorney, complains: that whereas, before and at the time of the making of the agreement hereafter next mentioned, the said John was possessed of a certain messuage or dwelling house, with the appurtenances, situate in the parish and county aforesaid, for the residue of a certain term of years then to come and unexpired, and theretofore thereof granted under and by virtue of a certain indenture of lease thereof: And whereas also the said John, before and at the time of the making of the agreement hereafter next mentioned, exercised and carried

Declaration against defendant, for not fulfilling an agreement, whereby he was to give his trade of a pawnbroker up to the plaintiff, on the defendant's paying for the stock in trade.

ried on the trade and buſineſs of a pawnbroker in the aforeſaid meſſuage or dwelling-houſe, and was then and there poſſeſſed of a certain large ſtock in trade, and of divers fixtures and implements of trade there then being in the ſaid meſſuage or dwelling-houſe, and of and belonging to the ſame, and to the aforeſaid trade thereof; and the ſaid John being ſo poſſeſſed as aforeſaid, and ſo exerciſing and carrying on ſuch trade and buſineſs as aforeſaid, it was heretofore, to wit, on, &c. at, &c. agreed, by and between the ſaid Alexander and the ſaid John, that the ſaid John ſhould aſſign over and give up to the ſaid A. P. the ſaid leaſe of the ſaid meſſuage or dwelling-houſe, for the reſidue of the ſaid term of years then to come therein and unexpired; and that the ſaid John ſhould relinquiſh and yield up his aforeſaid trade and buſineſs of a pawnbroker ſo by him exerciſed and carried on in the ſaid houſe as aforeſaid, unto and in favour of him the ſaid Alexander; and that for the ſaid leaſe and the aforeſaid fixtures and implements of trade the ſaid Alexander ſhould give and pay to the ſaid John the ſum of two hundred pounds of lawful, &c.; and that the ſaid ſtock in trade, which was then and there computed to be of the value of four thouſand five hundred pounds, ſhould be appraiſed and valued to the ſaid Alexander; and over and beſides ſuch valuation thereof, the ſaid Alexander ſhould pay and give to the ſaid John for the ſame at and after the rate of five pounds per cent. on ſuch valuation thereof; and that, for the payment of the ſaid valuation, the ſaid Alexander ſhould procure one A. B. to give to the ſaid John his the ſaid A. B.'s bonds, to the extent of four thouſand pounds, of ſuch valuation, for one thouſand pounds each, payable at two, four, ſix, and eight years, and his promiſſory note at a year, for ſo much money as the ſaid ſtock in trade ſhould be valued at as aforeſaid above the ſum of four thouſand pounds; which ſaid agreement being ſo made as aforeſaid, he the ſaid Alexander afterwards, to wit, on, &c. at, &c. paid, and cauſed to be paid, to the ſaid John, who then and there accepted and received from the ſaid Alexander a large ſum of money, to wit, the ſum of one hundred pounds, in part payment of the money to be paid under the ſaid agreement, as and by way of earneſt to bind the ſame, and the bargain thereby made: and thereupon afterwards, to wit, on, &c. in conſideration of the ſeveral premiſes aforeſaid, and alſo in conſideration that the ſaid Alexander had undertaken, and then and there faithfully promiſed the ſaid John, to perform and fulfil the ſaid agreement in all things therein contained, on his part and behalf to be performed and fulfilled, he the ſaid John then and there undertook, and faithfully promiſed the ſaid Alexander, to perform and fulfil the ſaid agreement, in all things therein contained on his part and behalf to be performed and fulfilled: And the ſaid Alexander in fact ſays, that although always after the making of the ſaid agreement he was ready and willing, and afterwards, to wit, on, &c. at, &c. offered to value and procure the aforeſaid ſtock in trade to be valued and appraiſed by proper and fit perſons for that purpoſe, and was then and there ready and willing, and offered

to

to accept, take, and pay for the ſame, together with
of the aforeſaid leaſe of the ſaid premiſes for the ſaid term of years then to come therein and unexpired; and the ſaid fixtures and implements of trade ſo being in the ſaid premiſes as aforeſaid, upon the terms, and according to the tenor and effect of the ſaid agreement; and alſo to do and perform, and cauſe to be performed, all things in the ſaid agreement contained, on his part and behalf to be performed and fulfilled, according to the tenor and effect of the ſaid agreement; and although the ſaid John was then and there requeſted by the ſaid Alexander to execute and fulfil the ſaid agreement with him the ſaid Alexander: Yet the ſaid John, not regarding the ſaid agreement, nor his aforeſaid promiſe and undertaking, but contriving and fraudulently intending to defraud and injure the ſaid Alexander, did not nor would then and there, nor at any other time whatſoever, aſſign over or give up to the ſaid Alexander the ſaid leaſe of the ſaid premiſes for the ſaid term of years then to come therein and unexpired, nor for any term of years whatſoever, nor would then and there, nor at any other time whatſoever, give and yield up his aforeſaid trade and buſineſs of a pawnbroker therein to and in favour of him the ſaid John, nor would then and there, nor at any other time whatſoever, ſuffer or permit the ſaid fixtures in the ſaid premiſes to be valued or appraiſed, or otherwiſe from thence to remove, but in every wiſe neglected and refuſed to perform and fulfil his ſaid agreement with him the ſaid Alexander; but hitherto to do the ſame and there always hitherto hath wholly and abſolutely refuſed, and ſtill refuſes, ſo to do, contrary to the tenor and effect of the ſaid agreement, and his promiſe and undertaking of the ſaid John in that behalf, and in breach and violation thereof, to wit, at, &c.; whereby, and by reaſon of which ſeveral premiſes, the ſaid Alexander hath loſt and been deprived of all benefit and advantage which would otherwiſe have ariſen and accrued to him from a completion and performance of the ſaid agreement on the part of him the ſaid John, and hath alſo loſt and been deprived of a certain beneficial ſituation and employment which he the ſaid Alexander, at the time of the making of the ſaid agreement, had and held as agent and aſſiſtant to one C. D. in his trade and buſineſs of a pawnbroker, and ſaid ſituation and employment he the ſaid Alexander, under the idea of the ſaid John performing the ſaid agreement, was induced to quit and reſign, in order to enable him the ſaid Alexander to perform the ſaid agreement on his part, and to take the ſaid premiſes and buſineſs therein mentioned as aforeſaid, to wit, at, &c. V. LAWES.

MANOR and FOREST of MACCLESFIELD, in the COUNTY of CHESTER, to wit. F. B. complains of J. W. Declaration in the manor court againſt the guardian of an orphan, who put apprentice to the plaintiff as a mariner, and ſtipulated to bind her by indenture for three years, and to give a fee in conſideration of plaintiff's maintaining her, and teaching her her buſineſs: breach, that the defendant took the apprentice away at the end of one year, and refuſed to bind her by indenture, or to pay the fee, by which the plaintiff loſt the orphan's ſervices, and alſo the chance of another apprentice with a fee.

in a plea of treſpaſs on the caſe, to the damage of the ſaid F. of thirty pounds; and thereupon the ſaid F. by A. B. her attorney, complains: for that whereas the ſaid F. before and at the time of the making of the two ſeveral agreements hereafter mentioned, was, and from thence continually hitherto hath been, and ſtill is, a milliner, and the buſineſs of a milliner during all the time aforeſaid, uſed, exerciſed, and carried on, to wit, at, &c. and within the juriſdiction of this court; and the ſaid F. ſo uſing and exerciſing ſuch buſineſs as aforeſaid, heretofore, to wit, on, &c. at, &c. it was agreed by and between the ſaid F. and the ſaid J. to the effect following: that one A. B. an infant, the orphan grand-daughter of the ſaid J. ſhould become an apprentice duly bound by indenture to the ſaid F. to ſerve her for the term of three years then next following the ſaid agreement, as well in the ſaid buſineſs as alſo as a menial ſervant in the houſe of the ſaid F.; and that he the ſaid J. ſhould and would well and truly pay to the ſaid F. the ſum of five pounds of lawful money of Great Britain, as an apprentice-fee with his ſaid grand-daughter, and that ſhe the ſaid F. ſhould and would find and provide meat, drink, waſhing, and lodging for the ſaid A. B during the ſaid term; and the ſaid agreement being ſo made as aforeſaid, heretofore, to wit, on, &c. at, &c. and within the juriſdiction of this court, ſhe the ſaid F. at the ſpecial inſtance and requeſt of the ſaid J. undertook, and then and there faithfully promiſed the ſaid J. to perform and fulfil the ſaid agreement in all things therein contained on her part and behalf to be performed and fulfilled; and in conſideration thereof he the ſaid J. undertook, and then and there faithfully promiſed the ſaid F. to perform and fulfil the ſaid agreement in all things therein contained on his part and behalf to be performed and fulfilled: And the ſaid F. in fact ſays, that although ſhe, afterwards, in purſuance of the ſaid agreement, to wit, on, &c. at, &c. took and received the ſaid A. B. into her ſervice, on the terms and conditions aforeſaid, and to there kept and continued her there for a long ſpace of time, to wit, for one year of the ſaid term; and although ſhe the ſaid F. during all the time of the ſaid A. B.'s continuance with her the ſaid F. there found and provided for the ſaid A. B. meat, &c. according to the ſaid agreement; and although the ſaid F. was there ready and willing to accept and take the ſaid A. B. as her apprentice duly bound by indenture for the ſaid term of years, according to the ſaid agreement, and then and there, to wit, on, &c. at, &c. and often afterwards, tendered and offered ſo to do, and then and there required J. to pay to the ſaid F. the ſaid ſum of five pounds, the ſaid apprentice-fee with the ſaid A. B: Yet the ſaid J. not regarding, &c. but contriving, &c. the ſaid F. in this behalf did not nor would, when he was ſo required, bind the ſaid A. B. nor did nor would permit or ſuffer her to become and be bound apprentice to the ſaid F. upon the terms of the ſaid agreement, but then and there wholly refuſed ſo to do, or to pay the ſaid ſum of five pounds as an apprentice-fee with the ſaid A. B. and afterwards, and within the term, to wit, at the

In the manor of Macclesfield.

expi-

expiration of one year from the commencement thereof, without the leave or licence, and againſt the will of the ſaid F. there took away the ſaid A. B. and cauſed her to leave the ſervice of the ſaid F. contrary to the form and effect of the ſaid agreement, of the ſaid promiſe and undertaking of the ſaid J. in that behalf made as aforeſaid, and in breach and violation thereof, to wit, at, &c.; whereby the ſaid F. not only there loſt and was deprived of the ſervices and aſſiſtance of the ſaid A. B. in the capacities aforeſaid, for the reſidue of the ſaid term, but alſo was then and there hindered and prevented from accepting and taking into her ſaid employ and ſervice another apprentice to her ſaid buſineſs, to wit, one C. D. with a certain large ſee as an apprentice-fee with the ſaid C. D. whom ſhe the ſaid F. declined accepting as an apprentice to her in her ſaid buſineſs, in confidence of the ſaid promiſe and undertaking of the ſaid J. that the ſaid A. B ſhould remain and continue the apprentice of the ſaid F. for the term, and in manner and form expreſſed in the ſaid agreement, to wit, at, &c. *And whereas* the ſaid F. ſo uſing and exerciſing ſuch buſineſs as aforeſaid, heretofore, to wit, on, &c. at, &c. it was agreed by and between the ſaid F. and the ſaid J. to the effect following, that is to ſay, that one A. B. an infant, the orphan grand-daughter of the ſaid J. ſhould ſerve the ſaid F. for the term of three years next following the making of the ſaid agreement, as well in the ſaid buſineſs as alſo as a menial ſervant in the houſe of the ſaid A. B.; and that he the ſaid J. ſhould and would pay to the ſaid F. the ſum of five pounds of, as an apprentice fee with the ſaid A. B. and that ſhe the ſaid F. ſhould and would find and provide meat, &c. for the ſaid A. B. during the ſaid term; and the ſaid laſt-mentioned agreement being ſo made as aforeſaid, heretofore, to wit, on, &c. at, &c. the ſaid F. at the ſpecial inſtance and requeſt of the ſaid J. undertook, and then and there faithfully promiſed the ſaid F. to perform, &c. (mutual promiſes as in firſt Count): And the ſaid F. in fact ſays, that although ſhe afterwards, in purſuance of the ſaid laſt-mentioned agreement, to wit, on, &c. at, &c. took and received the ſaid A. B. into her ſervice on the terms and conditions aforeſaid, and there ſo kept and continued her for a long ſpace of time, to wit, for one year of the ſaid term; and although ſhe the ſaid F. during all that time, found and provided for the ſaid A. B. meat, &c. according to the ſaid agreement; and although the ſaid F. was there ready and willing to keep and continue the ſaid A. B. in her ſaid ſervice for the ſaid term of three years, according to the ſaid agreement, and then and there, to wit, on, &c. at, &c. and often afterwards, deſired and offered ſo to do, and requeſted the ſaid J. to pay to her the ſaid F. the ſaid five pounds as an apprentice-fee with the ſaid A. B. under the ſaid laſt mentioned agreement: Yet the ſaid John, not regarding, &c. but contriving, &c. the ſaid F. in this behalf, did not, nor would he permit and ſuffer the ſaid A. B. to ſerve the ſaid A. B. for the reſidue of the ſaid term of three years; but on the contrary thereof afterwards, and within the ſaid term, to wit, at the expiration of

one year from the making of the ſaid laſt-mentioned agreement, without the leave or licence, and againſt the will of the ſaid F. not only there took away the ſaid A. B. from, and cauſed her to leave the ſervice of the ſaid F. but then and there refuſed and neglected to pay the ſaid ſum of five pounds, and ſtill refuſes to pay the ſame, or any part thereof, contrary to the form and effect of the ſaid laſt-mentioned agreement, and the ſaid promiſe and undertaking of the ſaid J. in that behalf made as aforeſaid, and in breach and violation thereof, to wit, at, &c. (3d and 4th Counts, *indebitatus aſſumpſit* for inſtructions and neceſſaries; 5th, 6th, and 7th Counts, common money Counts, and common concluſion.) Query as to end, whether any pledges. THO. BARROW.

Opinion—When to declare generally in *indebitatus aſſumpſit*, and when ſpecially.

I doubt how far, in a complicated queſtion like the preſent, the plaintiff ought to be permitted to recover the whole that ſhe is ſtrictly entitled to by a general *indebitatus aſſumpſit*. I take it, that in ſuch form of action, there muſt always be an equivalent received by the defendant to raiſe in him an obligation to pay; but in caſe the only benefit the defendant has received, for which he could to make a compenſation for the inſtruction afforded the infant at his requeſt (for its maintenance is diſcharged by the ſervices it performed during the period in which that maintenance was ſupplied), which by no means conſtitutes the whole of plaintiff's demand, compoſed as it is of that conſideration, together with the loſs of the ſubſequent ſervices of the infant, and the fee agreed for (or in lieu of that the loſs of another apprentice with another fee), for all which the plaintiff ought to receive a ſatisfaction as a loſs to her, ariſing out of the breach of contract ſolemnly entered into by the defendant; but how can the Court and jury try the truth of theſe facts, in order to give damages proportioned to the juſtice of the plaintiff's claim, unleſs they are ſpecially ſtated in her declaration; for, were it eſtabliſhed, that they might be recovered under the general form of declaring before mentioned, this abſurdity muſt neceſſarily enſue, that the plaintiff's caſe, and that which purports to be a formal and authentic ſtatement of that caſe, would be materially different, the latter alledging one thing, and the proof entirely another thing, which is not only contrary to every principle of pleading, but this unjuſt conſequence will always follow, that a defendant will thereby be ſubject to be ſurprized and fixed with a demand which a fair notice would or might have enabled him to ſatisfy or explain away.

In ſhort, I take the rule in all thoſe caſes to be, that when one perſon is under a legal obligation to pay money to another, as the value of ſomething equivalent, the law will imply an expreſs promiſe to pay (though none may have been made), in ſupport of the action of general *indebitatus aſſumpſit* for the recovery of it, but where the defendant has not received an equivalent for what is demanded, but by a breach of ſome expreſs contract, or ſome moral duty to be performed on his part, the ſaid plaintiff has ſuffered a civil injury that ought to be redreſſed in damages, a conſideration is thereby raiſed in law for the purpoſes of ſubſtantial juſtice between the parties, out of all the circumſtances of the caſe, which the plaintiff ſhould ſtate ſpecially in his declaration, that the law might give an adequate recompence in damages.

Such circumſtances I think exiſt in the preſent caſe, and have endeavoured to arrange them according to the rule I have mentioned, which, if the plaintiff can prove as ſtated, will intitle her to damages equal to the loſs ſhe has ſuſtained.

Should it be attempted to bring the caſe within the ſtatute of Frauds, as an undertaking for the default of another, I am of opinion it cannot be ſo conſidered, becauſe the defendant, ſtanding in *loco parentis*, was competent to make the contract in queſtion for the infant. But admitting that the defendant and the infant had been ſtrangers, the contract, from what was, has been in part executed, and therefore not within the miſchief of the ſtatute, and were that too out of the queſtion, the infant neither did contract, nor was of capacity to do it; and therefore the undertaking on the part of the defendant was originally and perſonally binding.

If it can be proved, as ſtated in the caſe, that the defendant is the general agent of the huſband in all his concerns, I think the action properly brought.

[redacted] THO. BARROW.

LONDON,

Declaration against a broker for not making an entry of coffee imported with the proper officer of excise and not landing the same to be put in warehouses, as directed by statute per quod the coffee was seized.

LONDON, to wit. W. P. and G. P. late of, &c. were attached to answer M B. in a plea of trespass on the case, &c.; and thereupon the said plaintiff, by his attorney, complains: for that whereas the said plaintiff heretofore, to wit, on, &c. imported a large quantity or parcel of raw coffee, to wit, one thousand one hundred weight of raw coffee, in a certain ship or vessel called the , from Jamaica in parts beyond the seas to Great Britain, to wit, into the port of London, to wit, at London, &c. *And whereas afterwards, to wit, on the same day and year last aforesaid, one J. D. who was master of the said ship in which the said coffee was imported, made no entry or report upon oath at his majesty's custom-house, of the burthen, contents, and lading of such ship, in pursuance of the direction of the statutes made in the thirteenth and fourteenth years of the reign of King Charles, intituled,* "*An Act for preventing Frauds and regulating Abuses in his Majesty's Customs:*" And whereas the said defendants, on the twenty-seventh July 1773 aforesaid, and long before, had used, exercised, and carried on, and still do use, exercise, and carry on the trade, business, and employment of brokers, to wit, at, &c. aforesaid; and the said plaintiff having so imported the said coffee as aforesaid, and the same being on board the said ship or vessel as aforesaid, and the said defendants, so using and exercising the trade and business of brokers as aforesaid, and *thirty days not being elapsed and expired since the said J. D. had made the said entry and report as aforesaid*, to wit, on said twenty-seventh July 1773, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendants, had employed the said defendants to make a due entry on the behalf of said plaintiff, as importer of the said coffee as aforesaid, of the said coffee, with an officer of excise appointed by the commissioners of the excise in England for that purpose, and to land the same, to be put in warehouses, within thirty days next after the said J. D. so made the said entry or report, according to the form of the statute in such case made and provided, for a certain reasonable reward to be paid by the said plaintiff to the said defendants for the same, they the said defendants undertook, and then and there faithfully promised the said plaintiff to make a due entry on behalf of the said plaintiff, as importer of the coffee as aforesaid, of the said coffee, with an officer of excise appointed by the commissioners of excise in England for that purpose, and to land the same, to be put in warehouses, within thirty days next after the said J. D. so made the said entry or report as aforesaid, according to the form of the statute in such case made and provided: Yet the said defendants, not regarding, &c. but contriving, &c. did not make due entry of the said coffee of the said plaintiff with such officer of excise as aforesaid, and land the same, to be put in warehouses, within thirty days next after the said J. D. made the said entry or report as aforesaid, according to the form of the statute in such case made and provided, and according to their said promise and undertaking, although the said defendants

fendants were often requeſted by the ſaid plaintiff ſo to do; but to do this the ſaid defendants wholly neglected and omitted, contrary to their ſaid promiſe and undertaking; by means whereof, and by force of the ſtatute in that caſe made and provided, the ſaid coffee of ſaid plaintiff, for want of ſuch landing and entry thereof within the ſaid thirty days, became forfeited; and being ſo forfeited, afterwards, to wit, on thirty-firſt Auguſt, were ſeized as forfeited by the officers of his majeſty's excile, and were and are wholly loſt to the ſaid plaintiff, to wit, at, &c. aforeſaid. And whereas alſo the ſaid plaintiff heretofore, to wit, on ſaid twenty-ſeventh July 1773 aforeſaid, imported another large quantity of coffee, to wit, pounds of coffee, in another ſhip or veſſel called the from parts beyond the ſeas, to wit, from Jamaica into Great Britain, to wit, into the port of London, *by way of merchandize, to be there unſhipped, to be laid on land, the ſame being merchandize for which divers cuſtoms, ſubſidies, and other duties were then due and payable to his majeſty upon the unſhipping the ſame, to be laid on land, to wit, &c.*: And whereas the ſaid defendants, ſo being brokers as aforeſaid, and the ſaid plaintiff having ſo imported the ſaid coffee as laſt aforeſaid, on the ſame day and year laſt aforeſaid, at, &c. aforeſaid, in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of ſaid defendants, had employed the ſaid defendants to *unſhip and land* the ſaid laſt-mentioned coffee *for the uſe of the ſaid plaintiff* had undertaken and faithfully promiſed to pay to them the ſaid defendants a certain reaſonable reward or ſum of money for their labour and trouble therein, *and to pay them all ſuch ſum and ſums of money as they ſhould pay for the cuſtoms, ſubſidies, and other duties as were due and payable to our ſaid lord the king upon the unſhipping of the ſame, to be laid on land as aforeſaid*, they the ſaid defendants undertook, and then and there faithfully promiſed the ſaid plaintiff, to *unſhip and land the ſaid laſt-mentioned coffee* of ſaid plaintiff from *on board the ſaid laſt-mentioned ſhip or veſſel, and to pay, or cauſe to be paid or lawfully tendered, or to agree for all ſuch cuſtoms, ſubſidies, and other duties as are due and payable to our ſaid lord the king upon the unſhipping of the ſame, in order to be laid on land before the ſame ſhould be unſhipped, to be laden on land according the form of the ſtatute in that caſe made and provided*: Yet the ſaid defendants, not regarding, &c. did unſhip, to be laid on land, the ſaid laſt-mentioned coffee, the ſubſidies and other duties due and payable to our ſaid ſovereign lord the king for the ſame goods not being firſt paid or lawfully tendered to the collector thereof, or his deputy, with the conſent and agreement of the comptroller or ſurveyor there, or one of them at leaſt, nor agreed with them for the ſame in the cuſtom houſe, according to the ſtatute in that caſe made and provided, contrary to the form of the ſaid ſtatute and the ſaid promiſe and undertaking of the ſaid defendant; by means whereof the ſaid laſt-mentioned coffee became forfeited; and being ſo forfeited, the ſaid coffee was afterwards ſeized and arreſted *by*

T. D.

T. D. and W. N. to the uſe of his ſaid majeſty as forfeited, and afterwards, to wit, in Michaelmas term in fourteenth year of the reign of our lord the now king, upon a certain information duly exhibited in his majeſty's court of exchequer at Weſtminſter, on the information of the ſaid *T. D. and W. N.* it was adjudged by the barons of the ſame court that the ſaid laſt-mentioned coffee ſhould, for the reaſons aforeſaid, remain forfeited, and that the ſame, and every part thereof, ſhould be delivered to the commiſſioners of his majeſty's exciſe, to be by them publicly ſold, according to the ſtatute in that caſe made and provided, as by the ſaid information and judgment remaining of record in the ſaid court of exchequer more fully appears; by means whereof the ſaid plaintiff hath wholly loſt the ſaid coffee, to wit, at, &c. (3d Count, money had and received; and breach.) GEO. WOOD.

Declaration by the churchwardens and overſeers of a pariſh againſt defendant, for promiſing one J. D. who had been apprehended by a juſtice's warrant for a baſtard-child, to eſcape out of his cuſtody, contrary to his promiſe to bring him before the juſtices in conſideration of plaintiff's permitting him ſo to take J. D.

LANCASHIRE, to wit. C. F. churchwarden, R. A. and J. F. overſeers of the poor of the pariſh of , in the county of , complain of Richard Maſon being, &c.: for that whereas one E. B. of the townſhip of M. aforeſaid in the county aforeſaid ſingle woman, on her voluntary examination taken upon oath S. e ſaid county, thirtieth December 1773, before one R. H. equire, one of his majeſty's juſtices aſſigned to keep the peace of our ſaid lord the king, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committ within the ſaid county, did make oath and ſay, that ſhe believ ſelf to be with child of a baſtard-child or children, w when born, was and were likely to become chargeable to the townſhip of M. or ſuch other townſhip, pariſh, or place, where it or they ſhould happen to be born; and the ſaid Elizabeth did then and there, on the ſaid oath, charge James Diſley, of R. in the ſaid county, huſbandman, with having gotten her with child of the ſaid baſtard-child or children, and *that he was the only true and only father thereof*: and thereupon the ſaid R. H. eſquire, to being one of his majeſty's juſtices of the peace as aforeſaid, afterward, to wit, on the ſaid thirtieth December 1773, at S. in A. aforeſaid, upon application made to him by one of the overſeers of the poor of the ſaid townſhip of M. as aforeſaid, according to the form of the ſtatute in that caſe made and provided, iſſued a warrant under his hand and ſeal, directed to all high and petty conſtables, and other civil officers whom it might concern, in the county of L. eſpecially to the conſtables of R. aforeſaid, and alſo to R. S. and W. H. whereby, after reciting that the ſaid E. B. of M. in the county of L. aforeſaid, ſingle woman, had voluntarily upon her oath declared before him the ſaid R. H. eſquire, one of his majeſty's juſtices of the peace and quorum in and for the ſaid county, that ſhe believed herſelf to be with child of a baſtard-child or children, which, when born, was or were likely to become chargeable to the ſaid townſhip of M. or ſuch other townſhip, pariſh, or place where it or they

ſhould happen to be born; and that ſhe the ſaid E. B. had on oath charged J. D. of, &c. with having gotten her with child of the ſaid baſtard-child or children; and that he was the true and only father thereof; the ſaid juſtice did therefore, upon application made by one of the overſeers of the townſhip in his majeſty's name, command them, and every of them, that they ſhould immediately, on ſight thereof, apprehend the ſaid J. D. and bring him before him or ſome other of his majeſty's juſtices of the peace in and for the ſaid county, to be committed to the common jail or ſome other houſe of correction in and for the ſaid county, unleſs he ſhould give ſecurity to indemnify the ſaid townſhip of M. or any other townſhip, pariſh, or place, where the ſaid baſtard-child or children ſhe ſhould happen to be born, or ſhould enter into a recognizance with a ſufficient ſecurity, upon condition to appear at the then next general quarter ſeſſions of the peace to be holden by adjournment at P. in and for the ſaid county, and to abide by and perform ſuch orders *as ſhould be made and provided*; by virtue of which ſaid warrant the ſaid R. and W. afterward, to wit, on the ſame day and year laſt aforeſaid, at R. aforeſaid, apprehended the ſaid J. D. and were then and there about to convey him before the ſaid R. H. eſquire, ſo being one of his majeſty's juſtices of the peace as aforeſaid, according to the exigency of the ſaid warrant: and thereupon afterwards, to wit, on the ſame day and year laſt aforeſaid, at, &c. aforeſaid, in conſideration that the ſaid R. and W. at the ſpecial inſtance and requeſt of the ſaid R. would deliver the ſaid J. D. unto his the ſaid R.'s cuſtody, the ſaid R. undertook, and then and there faithfully promiſed the ſaid C. R. and J. that he the ſaid R. would forthwith bring the ſaid James to and before the ſaid juſtice, in order to comply with the exigency of the ſaid warrant: And the ſaid C. R. and J. aver, that they, confiding in the ſaid promiſe and undertaking of the ſaid R. and in hopes of the faithful performance thereof, at the ſaid inſtance and requeſt of the ſaid Richard, afterwards, to wit, on, &c. at, &c. did deliver the ſaid James into his the ſaid Richard's cuſtody: Yet, &c. did not forthwith, or ever afterwards, bring the ſaid J. D. before the ſaid juſtice of the peace or any other of his majeſty's juſtices of the peace in and for the ſaid county, for the purpoſe aforeſaid; but to do the ſame wholly neglected and refuſed; and afterwards, to wit, on, &c. at, &c. permitted and ſuffered the ſaid James D. to eſcape and go at large where he would and pleaſed, whereby the ſaid James hath hitherto abſconded and ſecreted himſelf, and ſtill abſconds and ſecretes himſelf, to the ſaid C. R. and J. unknown, and has not hitherto been brought before his majeſty's juſtices of the peace, or any other juſtice of the peace in and for the ſaid county, in order to comply with the exigency of the ſaid warrant; and the ſaid E. B. afterwards, to wit, on ſixteenth May 1774, was delivered of a female baſtard-child within the ſaid townſhip of M. being the child whereof ſhe was pregnant at the time of her examination, and which child is ſtill living, to wit, at M. aforeſaid,

This was a verbal promiſe.

and

and by reaſon whereof the overſeers of the poor and other inhabitants of ſaid townſhip of M. have been put to great charge and expence in and about the birth and maintenance of the ſaid child, and have wholly loſt the means of compelling the ſaid James to maintain and ſupport the ſaid child at M. aforeſaid, to the damage of the ſaid C. R. and J. overſeers as aforeſaid, of pounds; and therefore they bring ſuit, &c.

OPINION. I am inclined to think, that a ſpecial action may be maintained againſt Maſon, for permitting Diſney to eſcape contrary to his ſaid promiſe and undertaking, for though Maſon had not any conſideration for undertaking the cuſtody of *Diſney*, yet when he actually undertook it, and entered upon it, he is, as I apprehend, anſwerable for it, and liable to an action for the non performance of it, occaſioned by his neglect; and I think, as the inhabitants of the townſhip of M. are injured by it, the action ſhould be in the name of the overſeers and churchwardens, who are in this caſe the repreſentatives of the townſhip at large. G. WOOD.

SOMERSETSHIRE, to wit. S. W. W. C. and R. T. complain of S. C. being, &c.: That whereas the ſaid plaintiffs and one A. B. ſince deceaſed in his lifetime, from Eaſter week A. D. 1785, and continually from thenceforth until Eaſter week A. D. 1786, were overſeers of the poor of the pariſh of D. in the ſaid county of S. in due manner nominated and appointed, and as ſuch overſeers of the poor of the ſaid pariſh, during the time aforeſaid, were poſſeſſed of or entitled to divers goods, monies, and effects, of great amount and value, to wit, the amount or value of one thouſand pounds of lawful money of Great Britain, for the purpoſe of uſing, applying, and appropriating the ſame to and for the ſupport, maintenance, relief, benefit, and advantage, and for and on account of the poor of the ſaid pariſh, to wit, at, &c. in, &c.: And whereas afterwards, and during the time of the ſaid plaintiffs and A. B. ſince deceaſed, in his lifetime, being overſeers as aforeſaid, to wit, on, &c. at, &c. they the ſaid plaintiffs and A. B. ſince deceaſed, in his lifetime, then and there retained and employed the ſaid S. C. at his ſpecial inſtance and requeſt, as their ſervant or agent, to look after and take care of the poor of the ſaid pariſh, during the time that they the ſaid plaintiffs and A. B. ſince deceaſed, in his lifetime, remained and continued overſeers as aforeſaid, and then and there entruſted the ſaid goods, monies, and effects ſo belonging to them, as ſuch overſeers as aforeſaid, with the ſaid S. C. as their ſervant or agent for him the ſaid S. C. to uſe, apply, and diſpoſe of the ſame for the maintenance, ſupport, benefit, and advantage of the poor of the ſaid pariſh, to wit, at, &c. in, &c.: and the ſaid S. C. being ſo retained, employed, and entruſted as aforeſaid, in conſideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully promiſed the ſaid plaintiffs and A. B. ſince deceaſed, in his lifetime, to do, execute, and perform the ſaid ſervice, truſt, and employment faithfully: Yet the ſaid S. C. not regarding his ſaid promiſe ſo by him made as aforeſaid, but con-

Declaration by three perſons who with a fourth, ſince deceaſed, had been overſeers of the poor, againſt defendant, who was employed by them to take care of the poor, for embezzling goods and proviſions.

contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs and W. B since deceased, in his lifetime, and the said plaintiffs, since his decease, in this behalf, did not faithfully do, execute, and perform the said service, trust, or employment but on the contrary thereof, afterwards, and during the time aforesaid, to wit, on, &c. and on divers other days and times afterwards, at, &c. in, &c. used, applied, and disposed of divers large quantities of the said goods and effects, to wit, fifty yards of woollen cloth, &c. of the value of two hundred pounds or like lawful money, for other and different purposes than as aforesaid, and then and there used and applied, converted and disposed of the same to and for his own use and benefit, emolument, and advantage, to wit, at, &c. in, &c.. And whereas, &c. (this Count same as first, in consideration that plaintiffs, as overseers, *had entrusted*, &c. Add the common Counts.)

Drawn by MR. CROMPTON.

Defendant pleaded the general issue, and gave a notice of set-off for work and labour.

Declaration by a maltster against his journeyman, for so carelessly making 100 coombs of barley into malt, that he spoiled the same, and rendered them unfit for sale.

SUFFOLK, to wit. W. L. *v.* S. P.: for that whereas the said William Long, before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c was, and continually from thence forth hitherto hath been and still is, a maltster, or a maker of barley into malt, and the trade, business, and employment of a maltster, or the making of barley into malt, during all the time aforesaid, hath used, exercised, and carried on for profit and gain, to wit, at, &c.: And whereas the said William afterwards, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. had, at the special instance and request of the said defendant, hired and retained him the said defendant, for certain reasonable wages to be therefore paid him by the said plaintiff, as and to be his servant in the making of barley into malt in his aforesaid trade and business: And whereas the said defendant, being so retained and hired as aforesaid, in consideration of the premises, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, that he the said defendant, during the time that he the said defendant remained in the service of the said plaintiff as such servant as aforesaid, would use all due care, diligence, and fidelity, in the making of barley, intrusted to him, into malt, in the aforesaid trade or business, and in the management and taking care of his aforesaid trade and business: And the said William in fact says, that afterwards, and whilst the said defendant remained and continued in his the said plaintiff's service as such servant as aforesaid, to wit, on, &c. at, &c. was entrusted with divers large quantities of barley, to wit, one hundred coombs of barley, of great value, to wit, of the value of five hundred pounds of lawful money of Great Britain, of him the said plaintiff, to be by him the said defendant, as such servant as aforesaid, made into malt, in the way of his the said

ſaid plaintiff's trade and buſineſs, according to the form and effect of his ſaid promiſe and undertaking ſo by him the ſaid defendant made as aforeſaid +: Yet the ſaid defendant, not regarding his ſaid promiſe and undertaking ſo by him made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid plaintiff in this behalf, did not, during the time he the ſaid defendant remained in the ſervice of the ſaid plaintiff, as ſuch ſervant as aforeſaid, uſe all due care, diligence, and fidelity in the making of the aforeſaid one hundred coombs of barley ſo intruſted to him as aforeſaid, into malt; but on the contrary thereof, afterwards, to wit, on, &c. at, &c. (1) *ſo very carelеſsly, negligently, reckleſsly, and improperly behaved and conducted himſelf in the making of the aforeſaid barley into malt, and in the management and taking care of the ſame, and then and there took ſo little and ſuch bad care in the making of the ſame barley into malt, that through the mere neglect and default of the ſaid defendant, and through his careleſsneſs and inattention (the ſaid barley being made into malt), the ſaid malt ſo by him the ſaid defendant made therefrom, became* and was totally ſpoiled and rendered uſeleſs, unfit for ſale, and of no uſe or value whatſoever to the ſaid plaintiff; whereby he the ſaid plaintiff not only loſt and was deprived of the value of the aforeſaid barley ſo made into malt, and of divers great gains and profits which would have ariſen to him from the ſale of the ſaid malt; but the ſaid William hath, by reaſon of the ſaid barley's being made into malt, been liable, and ſtill is liable, to pay divers large ſums of money, to wit, the ſum of two hundred pounds of lawful money of Great Britain, to our ſovereign lord the king for the duties of exciſe, payable for or in reſpect of the ſaid malt, to wit, at, &c. in, &c. And whereas the ſaid plaintiff, being ſuch maltſter or maker of barley into malt as aforeſaid, and the ſaid defendant being ſo retained and hired as aforeſaid, in conſideration of the ſaid laſt-mentioned premiſes, afterwards, to wit, on, &c. at, &c. he the ſaid defendant undertook, &c. the ſaid plaintiff, that he the ſaid defendant would, during the time he remained in the ſervice of the ſaid plaintiff as ſuch ſervant as aforeſaid, uſe all due care, &c. in the making the barley entruſted to him into malt, in the aforeſaid trade and buſineſs, and in the management and taking care of his aforeſaid trade and buſineſs: And the ſaid plaintiff in fact ſays, that afterwards, and whilſt the ſaid defendant remained and continued in his the ſaid plaintiff's ſervice, as ſuch ſervant as aforeſaid, to wit, on, &c. at, &c. was entruſted with divers other large quantities of barley, to wit, &c. of great value, &c. of him the ſaid plaintiff, to be by him the ſaid defendant, as ſuch ſervant as aforeſaid, made into malt, in the way of his the ſaid plaintiff's trade and buſineſs, according to the form and effect of his ſaid laſt-mentioned promiſe and undertaking ſo by the ſaid Samuel made as laſt aforeſaid: Yet, &c. (conclude this Count from this + ſame as firſt, only omitting what is in Italic and inſerting what is in the margin). And whereas alſo the ſaid plaintiff, long before the making of the promiſe and undertaking hereinafter

(1) *ſo willfully, wrongfully, injuriouſly, and wantonly behaved, &c. in the making of, &c. that he the ſaid defendant in the making of the ſaid barley into malt, willfully, &c. damaged, injured, and ſpoiled the ſame, inſomuch that the ſaid barley, after the ſame was made into malt, and every part became*"

2d Count.

3d Count.

inafter mentioned, to wit, on, &c. was, and continually from thence hitherto hath been, and ſtill is, ſuch maltſter as aforeſaid: And whereas the ſaid Samuel afterwards, and before the making of the promiſe and undertaking hereinafter mentioned, to wit, on, &c. was retained by the ſaid plaintiff as his ſervant as aforeſaid: And whereas the ſaid plaintiff, being ſuch maltſter as aforeſaid; and the ſaid Samuel being ſo retained and hired as aforeſaid; in conſideration of the laſt-mentioned premiſes, afterwards, on, &c. at, &c. he the ſaid defendant undertook, &c. the ſaid plaintiff, that he the ſaid defendant would, during the time he remained in the ſervice of the ſaid plaintiff as ſuch ſervant as laſt aforeſaid, take due and proper care of all barley and malt of and belonging to him the ſaid plaintiff, committed to his the ſaid defendant's care as ſervant as aforeſaid, and would at all times duly account to the ſaid plaintiff for the ſame barley and malt ſo committed to his care: And the ſaid William in fact ſays, that afterwards, and whilſt the ſaid defendant remained and continued in his the ſaid plaintiff's ſervice as ſuch ſervant as aforeſaid, to wit, on, &c. at, &c. he the ſaid defendant was entruſted with divers large quantities of barley and malt, to wit, one hundred coombs of other barley and one thouſand coombs of other malt of him the ſaid plaintiff, of great value, to wit, of, &c. to be by him the ſaid defendant, as ſuch ſervant as aforeſaid, taken care of and for him the ſaid plaintiff, and to account for the ſame, according to the form and effect of his ſaid promiſe and undertaking ſo by him made as laſt aforeſaid: Yet the ſaid defendant, not regarding, &c. but contriving, &c. the ſaid plaintiff in this behalf, did not, during the time he the ſaid defendant remained in the ſervice of the ſaid plaintiff, take due and proper care of the aforeſaid barley ſo committed to his care as laſt aforeſaid, or any part thereof, and did not duly account to the ſaid plaintiff for the ſaid barley and malt ſo committed to his care as laſt aforeſaid, according to the form and effect of his ſaid laſt-mentioned promiſe and undertaking; but on the contrary thereof hath wholly refuſed to account for the ſame barley and malt laſt-mentioned, and every part thereof, and hath converted and diſpoſed of the ſame to his own uſe; and by reaſon thereof he the ſaid plaintiff hath wholly loſt the ſaid laſt-mentioned barley and malt, to wit, at, &c. (Add the money Counts, and common concluſion.)

Drawn by Mr. Graham.

Plaintiff obtained a verdict, and 15l. damages.

Declaration in aſſumpſit, for a reward promiſed by an advertiſement, for procuring defendant's ſervant, who had abſconded with a large ſum of money, to be apprehended.

FOR that whereas the ſaid George Ernſt and John Dorville, heretofore, to wit, on the twenty-ſeventh day of February in the year of Our Lord 1790, at London, in the pariſh of St. Mary-le-Bow, in the ward of Cheap, did *cauſe to* be printed and publiſhed a certain printed hand-bill, dated from a certain place, called the

Public

Public Office, Bow-ſtreet, Saturday, February twenty-ſeventh, 1790, containing in ſubſtance and to the effect following, that is to ſay, "Ran away! Ran away! Ran away! Niels Karrê, clerk to a merchant in the city (meaning clerk to them the ſaid George Ernſt and John Dorville), with a large ſum of money;" and by the ſaid hand-bill they the ſaid defendants did then and there, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, promiſe, that whoever would apprehend the ſaid Niels Karrê, or give ſuch information to Sir Sampſon Wright at the above office (meaning the ſaid Public Office in Bow-ſtreet) as might be the means of his being apprehended, ſhould receive a reward of fifty guineas; and that a further reward of fifty guineas would be paid on conviction of the ſaid Niels Karrê: And the ſaid plaintiff further ſaith, that he, confiding in the ſaid promiſe and undertaking of them the ſaid defendants, ſo by them made as aforeſaid, did afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, *beſtow and apply great labour and diligence in and about the diſcovering* the ſaid Niels Karrê; and having thereby diſcovered the ſaid Niels Karrê, he the ſaid plaintiff then and there, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, *did give ſuch information* to the ſaid Sir Sampſon Wright, at the Public Office in Bow-ſtreet, in the ſaid hand-bill mentioned, *as was the means of the ſaid* Niels Karrê *being* afterwards *apprehended*; and the ſaid Niels Karrê, by means of ſuch information ſo by the ſaid plaintiff given as aforeſaid, was afterwards, to wit, on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, apprehended, as the ſaid defendants then and there well knew and had notice; whereby the ſaid defendants then and there became liable to pay the ſaid plaintiff the ſaid ſum of fifty-two pounds ten ſhillings, according to the tenor and effect of their ſaid promiſe ſo by them made in this behalf as aforeſaid. And whereas, heretofore, to wit, on the twenty-ſeventh day of February, in the year of Our Lord 1790 aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, one Niels Karrê, who before that time had been a clerk or ſervant of the ſaid defendants, was ſuſpected of having abſconded and ran away with a large ſum of money, the property of them the ſaid defendants; and thereupon afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that any one would give ſuch information reſpecting the ſaid Niels Karrê as might be the means of his being apprehended, they the ſaid defendants undertook, and then and there faithfully promiſed, to pay ſuch perſon who ſhould give ſuch information the ſum of fifty-two pounds ten ſhillings of lawful money of Great Britain, when they the ſaid defendants ſhould be thereto afterwards requeſted: And the ſaid plaintiff further ſaith, that he, confiding in the ſaid laſt-mentioned promiſe and undertaking of the ſaid defendants, ſo by them made as aforeſaid, having by much labour and diligence made a diſcovery reſpecting the ſaid Niels Karrê, did

2d Count, general.

did afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, give ſuch information reſpecting the ſaid N. K. to the ſaid defendants, that by means of ſuch information the ſaid N. K. was afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, apprehended, as they the ſaid defendants then and there well knew and had notice; whereby the ſaid defendants then and there became liable to pay to the ſaid plaintiff the ſaid ſum of fifty-two pounds ten ſhillings, according to the tenor and effect of the ſaid laſt-mentioned promiſe and undertaking ſo by them made as aforeſaid.

N. B. This cauſe was tried before Lord Kenyon at Guildhall, London, when it appeared in evidence, and was relied on by way of defence, that the party who had actually apprehended the felon had applied for and received the reward; but Lord Kenyon held, that the plaintiff was, notwithſtanding, entitled to recover, for both were entitled—the tenor of the advertiſement and the policy of the law required it.—*Ex relat.* Mr. Henderſon.
W. B

FOR that whereas the ſaid Arthur Charlotte, in his lifetime, to wit, on the ſeventeenth day of September in the year, &c. 1779, at Dudley, in the county aforeſaid, charged and alledged that one Ann Simmonds, then late a ſervant to the ſaid A. had then lately defrauded him the ſaid A. and other people, of money, wearing apparel, and table linen, and other things of value, to a great amount; and thereupon the ſaid A. afterwards, to wit, on the ſame day and year aforeſaid, at Dudley aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed, that if any perſon would diſcover the ſaid Ann S. ſo that ſhe might be brought to juſtice, ſuch perſon ſhould receive twenty pounds of him the ſaid A. C.: And the ſaid John in fact ſaith, that he, confiding in the ſaid promiſe and undertaking of the ſaid Arthur, afterwards, to wit, on the twenty-third day of February in the year of Our Lord 1779, at Dudley aforeſaid, did diſcover the ſaid Ann S. to the ſaid Arthur; and the ſaid Ann afterwards, to wit, on the day and year laſt aforeſaid, was committed to the cuſtody of the keeper of the gaol at Worceſter, to anſwer for the ſaid offence; whereof the ſaid A. in his lifetime, afterwards, to wit, on the day and year laſt aforeſaid, at Dudley aforeſaid, in the county aforeſaid, had notice; and by reaſon of the premiſes the ſaid Arthur became liable to pay the ſaid ſum of twenty pounds to the ſaid John, when he the ſaid Arthur ſhould be thereunto afterwards requeſted. And whereas alſo afterwards, to wit, on the twenty-third day of February in the year of Our Lord 1779, at Dudley aforeſaid, in the county aforeſaid, in conſideration that the ſaid John, at the ſpecial inſtance and requeſt of the ſaid Arthur, in his lifetime, had before that time cauſed and procured one Ann S. who then and there was charged by the ſaid Arthur to have then lately defrauded him the ſaid Arthur, and other people, of money, wearing apparel, table linen, and other things of value, to a great amount,

amount, to be taken into cuſtody to be detained in cuſtody by the ſaid A. to anſwer the laſt-mentioned charge of the ſaid A. he the ſaid A. afterwards, to wit, on the ſame day and year laſt aforeſaid, at D. aforeſaid, in the county aforeſaid, undertook, and to the ſaid John faithfully promiſed, to pay to him the ſum of twenty pounds of lawful money of Great Britain, whenever afterwards he the ſaid A. ſhould be thereunto requeſted.

W. BALDWIN.

Copy of the Advertiſment.

"WORCESTERSHIRE. Whereas Ann "Summers, late ſervant to Arthur Char- "lotte, of Hadbury, Eſq. hath lately "defrauded her ſaid maſter, and other "people, of money, wearing apparel, "table linen, and other things of value, "to a great amount.——If any perſon "will diſcover the ſaid Ann Summers, "ſo that ſhe may be brought to juſtice, "ſhall receive 20l reward."

This was inſerted in Barrow's Worceſter Journal on the 17th of September 1778, and not having the deſired effect, another, the ſame, only concluding, "ſhall receive 20l. of one Arthur Char- "lotte."

The plaintiff apprehended ſaid A. S. on the 23d of February 1779, and ſhe was committed to Worceſter Caſtle; when the jury, in Lent Aſſizes 1779, threw out the bill.

This action was tried Summer Aſſizes 1779, at Worceſter, and verdict for plaintiff.

Both the foregoing precedents copied from Henderſon's 15th Vol. 10. 222 224.

W. B.

S. and M. Eaſter Term, 31. Geo. 2.

MIDDLESEX. William Finch and William Hutchins, church-wardens of the pariſh of Aſhted, otherwiſe Eaſted, in the county of Surry, and William King and William Weſton, overſeers of the poor of the ſame pariſh, complain of William Farmer, church warden of the hamlet of Hammerſmith in the pariſh of Fulham in the county of Middleſex, of Mr. William Roberts and Daniel Springthorpe, overſeers of the poor of the ſame hamlet, being, &c. of a plea of treſpaſs on the caſe: for that whereas heretofore, before the time of making the promiſes and undertakings hereafter mentioned, to wit, on the ſecond day of February in the year of Our Lord 1788, to wit, at Weſtminſter in the county of Middleſex, one Mary Watſon, ſingle woman, whoſe legal ſettlement then was in the ſaid pariſh of Aſhted, was delivered of a male baſtard-child, in the ſaid hamlet of Hammerſmith, which ſaid baſtard-child thereby became and was legally ſettled in the ſaid laſt-mentioned hamlet, and was by them liable to be maintained, and was afterwards, and before the making of the promiſes and undertakings hereafter mentioned, duly removed with its ſaid mother for nurture, from and out of the ſaid hamlet of H. to the ſaid pariſh of A.; and the ſaid Mary W. and her ſaid child, being ſo removed and remaining in the ſaid pariſh of Aſhted, afterwards, and before the making of the promiſes and undertakings hereafter mentioned, to wit, on the eleventh day of July in the year of Our Lord 1788, to wit, at Weſtminſter aforeſaid in the

Declaration for *aſſumpſit*, by the church-wardens and overſeers of the poor of one pariſh gainſt thoſe of another, under an order of ſeſſees for the maintenance* of a baſtard born in the ſaid pariſh, but removed with its mother to the ſaid pariſh of A. 2d Count, for arrears accrued due in the plaintiffs own time.

* For Maintenance, &c. of Baſtards, Paupers.

ſaid

ſaid county of Middleſex, complaint was made unto Sir Sampſon Wright, knight, and William Addington, eſquire, two of his majeſty's juſtices of the peace in and for the ſaid county of Middleſex, by the church wardens and overſeers of the poor of the ſaid pariſh of Aſhted, that the church-wardens and overſeers of the poor of the ſaid hamlet of Hammerſmith had refuſed to maintain the ſaid baſtard child; and the ſaid complaint being ſo made as aforeſaid, they the ſaid laſt-mentioned juſtices thereupon then and there, by their ſummons under their reſpective hands and ſeals, duly made out and directed to the church-wardens and overſeers of the poor of the ſaid hamlet of H. in his majeſty's name required the ſaid laſt-mentioned church-wardens and overſeers perſonally to be and appear before them the ſaid juſtices at the Public Office in Bow-ſtreet, on Thurſday the ſeventeenth day of July then inſtant, at eleven o'clock in the forenoon, then and there to ſhew cauſe why the ſaid laſt-mentioned church-wardens and overſeers ſhould not maintain the ſaid baſtard-child; in obedience to which ſaid ſummons, afterwards, and before the making of the promiſes and undertakings hereafter mentioned, to wit, on the ſaid ſeventeenth day of July in the year of Our Lord 1788, at the Public Office in Bow-ſtreet, to wit, at Weſtminſter in the ſaid county of Middleſex, Thomas Skinner, then one of the overſeers of the poor of the ſaid hamlet of H. then and there appeared before the ſaid laſt-mentioned juſtices, in purſuance of the ſaid ſummons; but did not ſhew ſufficient cauſe why the church-wardens and overſeers of the poor of the ſaid hamlet of Hammerſmith ſhould not pay unto the church-wardens and overſeers of the poor of the ſaid pariſh of Aſhted, a ſufficient ſum towards the maintenance of the ſaid child: wherefore they the ſaid laſt-mentioned juſtices then and there by their order, duly made out under their hands and ſeals, bearing date the day and year laſt aforeſaid, did order that the ſaid church-wardens and overſeers of the poor of the ſaid hamlet of H. ſhould pay, or cauſe to be paid, to the church-wardens and overſeers of the poor of the ſaid pariſh of Aſhted, or ſome or one of them, the ſum of two ſhillings and ſixpence weekly and every week from the date of the ſaid order, for and towards the ſupport and maintenance of the ſaid child, for and during ſo long as he ſhould remain with his ſaid mother as a nurſe child at the expence of the ſaid hamlet of Hammerſmith; which ſaid order, ſo made as aforeſaid, after the making thereof, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, was duly ſerved upon the church-wardens and overſeers of the poor of the ſaid hamlet of H. for the time being, and the ſame ſtill remains in full force and unaltered, to wit, at Weſtminſter aforeſaid: And the ſaid plaintiffs, church-wardens and overſeers of the poor of the pariſh of Aſhted aforeſaid, in fact ſay, that afterwards, and before the making of the ſaid laſt-mentioned order, hitherto, the ſaid Mary W. and her ſaid ſon remained in the ſaid pariſh of Aſhted, during all which time the ſaid child was there a nurſe child with its ſaid mother, at the expence

of

of the ſaid hamlet of H. within the true intent and meaning of the ſaid order, to wit, at Weſtminſter aforeſaid; and that the ſaid church-wardens and overſeers of the poor of the ſaid pariſh of Aſhted, laid out, expended, and paid a large ſum of money, to wit, the ſum of eighteen pounds twelve ſhillings and ſixpence of lawful money of Great Britain, in and about the maintenance of the ſaid child; of which ſaid premiſes the ſaid defendants, church-wardens, &c. at Weſtminſter aforeſaid, in the county aforeſaid, had due notice: whereby and by reaſon of which ſaid ſeveral premiſes, the ſaid defendants, church-wardens, &c. became liable to pay to the ſaid plaintiffs, church-wardens, &c. a large ſum of money, to wit, the ſum of ſeven pounds ten ſhillings, for a great part of the ſaid time, to wit, ſixty weeks of the ſaid time, ending on the twenty-ſixth day of May in the year 1791 (the reſidue of the ſaid expenditure of eighteen pounds twelve ſhillings and ſixpence, on account of the ſaid maintenance of the ſaid child, having been duly paid to the church-wardens and overſeers of the poor of the ſaid pariſh of Aſhted), being at and after the rate of two ſhillings and ſixpence per week, for the ſaid ſixty weeks, towards the ſupport and maintenance of the ſaid baſtard-child, ſo remaining with his ſaid mother as a nurſe child at the pariſh of Aſhted, at the expence of the ſaid hamlet of H.; and being ſo liable, they the ſaid defendants, church-wardens, &c. aforeſaid, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid plaintiffs, church-wardens, &c. to pay them the ſaid ſeven pounds ten ſhillings when they the ſaid defendants ſhould be thereto afterwards requeſted: *And the ſaid plaintiffs*, church-wardens, &c. in fact further ſay, that after they became and were ſuch church-wardens and overſeers of the poor of the ſaid pariſh of A. as aforeſaid, and after the ſaid defendants became and were ſuch church-wardens and overſeers of the poor of the ſaid hamlet of H. as aforeſaid, and whilſt the ſaid order, ſo made as aforeſaid, remained in full force and unaltered, and whilſt the ſaid child ſo remained and continued with its ſaid mother as a nurſe child at the ſaid pariſh of A. at the expence of the ſaid hamlet of H. within the true intent and meaning of the ſaid order, to wit, on the ſaid twenty-ſixth day of May in the year of Our Lord 1791, to wit, at Weſtminſter aforeſaid, a large ſum of money, to wit, the ſum of ten ſhillings of like lawful money, became and was due and payable from the ſaid defendants as ſuch church-wardens, &c.; and they then and there, by force of the ſaid order, became liable to pay the ſame to the ſaid plaintiffs, as ſuch church-wardens, &c. for divers, to wit, four payments of two ſhillings and ſixpence per week, by the ſaid order directed to be made for divers, to wit, four weeks, elapſed after the ſaid plaintiffs became ſuch church-wardens, &c. as aforeſaid, and ending at the day and year laſt aforeſaid, for and towards the maintenance and ſupport of the ſaid baſtard-child, ſo remaining with its ſaid mother at the ſaid pariſh of Aſhted, as a nurſe child, under and by virtue of the ſaid order;

2d Count.

order; of which the ſaid defendants afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, had notice; and being ſo liable, they the ſaid defendants, in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, undertook, and then and there faithfully promiſed the ſaid plaintiffs, as ſuch church-wardens, &c. as aforeſaid, to pay them the ſaid laſt-mentioned ſum of money when they the ſaid defendants ſhould be thereto afterwards requeſted. And whereas the ſaid defendants, church-wardens, &c. aforeſaid, afterwards, to wit, on the twenty-eighth day of May, in the year laſt aforeſaid, at Weſtminſter, in the county aforeſaid, were indebted to the ſaid plaintiffs, church-wardens, &c. in twenty pounds of like lawful money, for money by them the ſaid plaintiffs before that laid out, expended, and paid to and for the uſe of the ſaid defendants, church-wardens, &c. and at their requeſt; and being ſo indebted, they the ſaid defendants in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid plaintiffs, church-wardens, &c. to pay them the ſaid laſt-mentioned ſum of money when they the ſaid defendants ſhould be thereto afterwards requeſted, (Counts for money had and received; account ſtated; and common concluſion; pledges, &c.) T. BARROW.

Declaration in ſpecial *aſſumpſit*, upon a charter-party of affreightment.

Eaſter Term, 32. Geo. 3. In the Common Pleas.

LONDON, to wit. William Uſborne was attached to anſwer George Pearſon, of a plea of treſpaſs on the caſe, &c.; and whereupon the ſaid G. P. by J. A. his attorney, complains: that whereas heretofore, to wit, on the eighth day of Auguſt, in the year of Our Lord 1791, at London aforeſaid, to wit, in the pariſh of St. Mary-le-Bow, in the ward of Cheap, at the ſpecial inſtance and requeſt of the ſaid W. U. it was agreed, by and between the ſaid plaintiff, by the deſcription of Mr. G. P. owner of the good ſhip or veſſel called the Friendſhip, of the burthen of three hundred and thirty tons, or thereabouts, then riding at anchor in the river Thames, and one John Oſborne, otherwiſe called John Uſborne, as the agent for and on behalf of the ſaid W. U. that the ſaid ſhip, being tight, ſtaunch, and ſtrong, and every way fitted for the voyage, ſhould with all convenient ſpeed ſail and proceed to Narva, or ſo near thereto as ſhe might ſafely get and there load, from the factors of the ſaid John Oſborne, about three hundred load of timber, twelve thouſand deals, and complete the cargo with broken ſtowage of latwood, or a cargo of timber and deals with ditto, the ſhip to be addreſſed to the order of the ſaid J. O. at Narva, but no commiſſion to be charged not exceeding what ſhe could reaſonably ſtow and carry over and above her tackle, apparel, proviſion, and furniture, and being ſo loaded ſhould therewith proceed to London or Hull, or ſo near thereto as ſhe might ſafely get and deliver the ſame, on being paid freight for timber, eighteen ſhillings per load; for deals, fifty-five ſhillings per hundred, Britiſh ſtandard;

ſtandard; for latwood is for broken ſtowage, or fathom of four-feet latwood, the freight of a load of timber; and ſo in proportion; if more was given at that time by the ſaid houſe, the ſaid ſhip to receive the ſame freight, with two thirds port charges and pilotage, reſtraint of princes and rulers during the ſaid voyage always excepted; one half of the freight to be paid on unloading and right delivery of the cargo, and the remainder in three months following; twenty running days were to be allowed the ſaid merchant, if the ſhip was not ſooner diſpatched, for loading the ſaid ſhip at Narva, and fifteen days for delivery at London or Hull, demorage three pounds per day, over and above the ſaid laying days; penalty for non-performance of that agreement one thouſand pounds; the deals to be taken by tale from the ſaid ſhip, or by bill of lading, and not from the tale of any wharf they might be ſent to: and the ſaid agreement being ſo made as aforeſaid, afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof, and alſo in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, by the ſaid John Otborne, had then and there undertaken, and faithfully promiſed the ſaid defendant, to perform and fulfil all things in the ſaid agreement contained, on his part and behalf to be performed and fulfilled, as ſuch owner of the ſaid ſhip or veſſel, he the ſaid defendant undertook, and to the ſaid plaintiff then and there faithfully promiſed, to perform and fulfil all things in the ſaid agreement contained, on his part and behalf to be performed and fulfilled, as ſuch freighter thereof as aforeſaid: And the ſaid plaintiff in fact ſays, that in purſuance of the ſaid agreement the ſaid ſhip or veſſel did, with all convenient ſpeed, proceed and go to Narva, or as near thereto as ſhe could ſafely get, and there loaded from the factors of the ſaid J. O. a large cargo of timber and deals, with latwood for broken ſtowage, to wit, four hundred loads, two thouſand deals, and thirty-two fathom of latwood for broken ſtowage, according to the form and effect of the ſaid agreement: And the ſaid plaintiff ſays, that after the loading of the ſaid cargo in and on board the ſaid ſhip or veſſel, according to the ſaid agreement, the ſaid ſhip or veſſel was ready to return and proceed with her cargo aforeſaid from Narva aforeſaid to London or Hull aforeſaid, and there to deliver the ſame; but the ſaid plaintiff ſays, that before the arrival of the ſaid ſhip or veſſel with her cargo at either of the aforeſaid places, to wit, on the ſeventh day of October in the year aforeſaid, the ſaid defendant ordered and directed the ſaid ſhip or veſſel with her ſaid cargo to proceed and go to Rocheſter, in lieu of London and Hull aforeſaid, and as a performance of her ſaid voyage and agreement on the part of the ſaid plaintiff: And the ſaid plaintiff ſays, that according to the aforeſaid order and direction of the ſaid defendant, the ſaid ſhip or veſſel did proceed to R. aforeſaid, and there, above three months before the commencement of this ſuit, to wit, on the firſt day of December, in the year of Our Lord 1791, delivered her ſaid cargo; whereof the ſaid defendant afterwards, to wit, on the ſame day

and year laſt aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, had notice: And the ſaid plaintiff further ſays, that more than the ſaid freight, to wit, eighteen ſhillings and ſixpence per load of timber, was *then, at the time of making the ſaid agreement*, given by the ſaid houſe, that is to ſay, to the captain or owner of the ſhip or veſſel called the Theodoſia, on a like voyage; by reaſon thereof, and of the ſaid agreement, he the ſaid plaintiff was entitled to the ſame, to wit, at London, &c.; by reaſon of which ſaid premiſes a large ſum of money, to wit, the ſum of four hundred and thirty two pounds eight ſhillings of lawful money of Great Britain, became, and was, and ſtill is, due from the ſaid defendant to the ſaid plaintiff, for the ſaid freight of the ſaid cargo ſo loaden on board the ſaid ſhip or veſſel as aforeſaid; and a further ſum of money, to wit, the ſum of forty-eight pounds of like lawful money, for divers, to wit, ſixteen days demorage, whereon the ſaid defendant kept the ſaid ſhip or veſſel on demorage, and more than the ſaid laying days in the ſaid agreement mentioned, by reaſon whereof became, and was, and ſtill is, due from the ſaid defendant to the ſaid plaintiff, according to the form and effect of the ſaid agreement; and a further ſum of money, to wit, the ſum of ſeventeen pounds ſeven ſhillings and tenpence of like lawful money became, and was, and ſtill is, due from the ſaid defendant to the ſaid plaintiff, for two-thirds port charges and pilotage of the ſaid ſhip or veſſel in the ſaid voyage, to wit, at London, &c.; of all which premiſes the ſaid defendant afterwards, to wit, on the ſame day and year laſt aforeſaid, there had notice, and by reaſon thereof then and there became liable to pay the ſame ſeveral ſums of money to the ſaid plaintiff, according to the form and effect of the ſaid agreement, and of the ſaid promiſe and undertaking ſo made as aforeſaid. (2d Count ſame as the firſt, only leaving out what is in Italic.) And whereas alſo, before the making of the promiſe and undertaking hereinafter next mentioned, the ſaid plaintiff had let and chartered to the ſaid defendant, a certain other ſhip or veſſel of the ſaid plaintiff, on a certain other voyage from London aforeſaid to parts beyond the ſeas, to wit, to Narva aforeſaid, or ſo near thereto as ſhe might ſafely get, and thence back again to London or Hull, to wit, at London, &c.; and the ſaid John Oſborne had then and there hired the ſaid ſhip or veſſel of the ſaid plaintiff for the ſaid voyage accordingly: and thereupon afterwards, to wit, on the ſeventh day of October, in the year of Our Lord 1791, at London, &c. in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, would permit and ſuffer the ſaid ſhip or veſſel to go and proceed to Rocheſter, inſtead of London or Hull aforeſaid, the ſaid defendant undertook, and to the ſaid plaintiff then and there faithfully promiſed, to pay the expence of ballaſting the ſaid ſhip or veſſel at Rocheſter aforeſaid: And the ſaid plaintiff ſaith, that he, confiding in the ſaid promiſe and undertaking of the ſaid defendant, did permit and ſuffer the ſaid ſhip or veſſel to go and proceed to Rocheſter aforeſaid, inſtead of London or Hull aforeſaid, and the

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ſaid ſhip or veſſel went to Rocheſter accordingly; and that by reaſon thereof the expence of ballaſting the ſaid ſhip or veſſel there amounted to a large ſum of money, to wit, the ſum of twenty pounds, of like lawful money, to wit, at London aforeſaid, &c.; of all which ſaid premiſes the ſaid defendant afterwards, to wit, on the firſt day of December, in the year laſt aforeſaid, there had notice, (4th Count, for the uſe, freight, and hire of ſhips; 5th, *Quantum meruit*; 6th, for work and labour; 7th, *Quantum meruit*; 8th, money paid; 9th, had and received; 10th, account ſtated; and common concluſion).

OPINION. I Have peruſed the declaration in this caſe, and on conſideration of the circumſtances of the defence am of opinion, that they may be given in evidence on the general iſſue of *non aſſumpſit*.

If there is no cuſtom of the place where the loading was taken in to regulate the queſtion of demorage, it ſeems to me a difficult matter to determine it from the nature of the contract between the parties; but thus much ſeems in favour of the defendant; the delay was occaſioned by ſtormy weather, termed in law the act of God, therefore ſuch as the defendant could not prevent, he had a cargo on ſhore ready to deliver if the plaintiffs could have taken it. The plaintiff's captain and crew were retained upon this particular duty only, and were provided with every neceſſary means, ſuch as boats, &c. for the purpoſe of loading, and had nothing elſe to attend to, the accident being inevitable; if the plaintiffs actually loaded the veſſel after the abatement of the ſtorm, it is ſtrong evidence of their liability in the firſt inſtance; and if we look at their declaration, they have averred (and therefore ought to prove), that the defendant *kept* the ſhip on demorage, which the evidence contradicts, for the delay was inevitable. But this caſe is of too nice a nature for me to ſpeak deciſively upon, eſpecially as I can meet with nothing like an authority one way or other; therefore would recommend the advice of ſome Gentlemen of more experience than myſelf to be taken upon it. T. BARROW.

MIDDLESEX, to wit. Archibald Hormar complains of Alexander Benſon, being, &c.: for that whereas the ſaid Alexander, before and at the time of making his promiſe and undertaking hereafter next mentioned, was, and from thence hitherto hath been, and ſtill is, a livery-ſtable-keeper, and the buſineſs of a livery-ſtable-keeper hath for and during all that time uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on, to wit, at, &c. aforeſaid: And whereas the ſaid Alexander ſo being a livery-ſtable-keeper, and ſo uſing, exerciſing, following, and carrying on his ſaid buſineſs at his ſaid ſtables as aforeſaid, heretofore, to wit, on the third day of November A. D. 1789, at, &c. aforeſaid, in conſideration that the ſaid Archibald, at the ſpecial inſtance and requeſt of the ſaid Alexander, would put to livery with the ſaid Alexander a certain gelding of the ſaid Archibald of a large price, to wit, of the price of thirty pounds of lawful, &c. to be kept, fed, and taken care of by the ſaid Alexander for the ſaid Archibald, for a certain reward to be therefore paid by the ſaid Archibald to the ſaid Alexander, he the ſaid Alexander and his ſervants ſhould and would from time to time, and at all times thereafter, when and ſo often as they ſhould be thereunto required by the ſaid Archibald, whilſt the ſaid gelding ſhould continue at livery with the ſaid Alexander, deliver

Special *aſſumpſit* in conſideration that plaintiff would put his horſe at livery with defendant, he undertook to deliver it whenever plaintiff ſhould want it.

deliver the ſaid gelding to him the ſaid Archibald: And the ſaid Archibald avers, that he, confiding in the ſaid promiſe and undertaking of the ſaid Alexander, ſo by him made in manner and form aforeſaid, did afterwards, to wit, on, &c. at, &c. aforeſaid, put the ſaid gelding of him the ſaid Archibald to livery with him the ſaid Alexander, for the purpoſe aforeſaid; and although he the ſaid Archibald did afterwards, and whilſt the ſaid gelding continued at livery with the ſaid Alexander, to wit, on the nineteenth day of November in the year aforeſaid, require a certain then ſervant of the ſaid Alexander to deliver the ſaid gelding to him the ſaid Archibald, to wit, at, &c. aforeſaid: Yet the ſaid Alexander, contriving and fraudulently and unjuſtly intending to injure the ſaid Archibald, did not nor would perform his ſaid promiſe and undertaking, ſo by him made in manner and form aforeſaid, but thereby craftily and fully deceived the ſaid Archibald in this, to wit, that the ſaid ſervant of the ſaid Alexander did not, nor would, at the ſaid time when he was ſo required as aforeſaid, deliver the ſaid gelding to him the ſaid Alexander, but wholly refuſed and neglected ſo to do, whereby the ſaid Archibald was hindered and prevented from riding and uſing his ſaid gelding in and about his neceſſary affairs and buſineſs, to wit, at the pariſh aforeſaid, in the county aforeſaid. And whereas (as before), that he the ſaid Alexander would deliver, &c. (omitting ſervants) when he the ſaid Alexander was requeſted: Yet the ſaid Alexander, not regarding, &c. did not nor would deliver, whereby, &c. (as before).

2d Count.

Drawn by MR. TIDD.

This caſe was ruled by Lord Kenyon at the ſittings after Michaelmas Term when his Lordſhip told the jury, the leaſt they could do would be to give the plaintiff 20l. damages; and remarked the indecent conduct of the defendant.

39 Geo. 3.

LONDON, to wit. Sarah Kennett was attached to anſwer William Greenwoilers in a plea of trespaſs on the caſe; and thereupon the ſaid William, by William Bennett, his attorney, complains: that whereas heretofore, to wit, on the thirty firſt day of May, in the year of Our Lord 1793, at London, to wit, in the parish of St. Mary le-Bow, in the ward of Cheap, it was agreed by and between the ſaid William (as the ſaid William then took upon himſelf the attornies of the court of our lord the now king, before the king himſelf) and the ſaid Sarah in manner and form following (that is to ſay), the ſaid William did then and there undertake to accept as an articled clerk, Robert Hennett, ſon of the ſaid Sarah, for the term of five years, and to provide him during that period with proper meat, drink, and lodging; in conſideration whereof the ſaid Sarah did then and there undertake to pay to the ſaid William the ſum of one hundred and fifty pounds, as a clerk's fee with the ſaid R. H. and to place him forthwith with the ſaid William; and the ſaid William and Sarah did then and there undertake, each to the other of them, that proper arti-

Declaration in aſſumpſit for the performance of an agreement to take defendant's ſon as articled clerk, and not paying the fee.

Count for the ſum agreed upon.

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cles of clerkſhip ſhould in one week's time then next following be drawn and executed, and that the party making default ſhould forfeit to the other the ſum of twenty pounds; and the ſaid agreement being ſo made as aforeſaid, afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration of the premiſes, and alſo in conſideration that the ſaid William, at the ſpecial inſtance and requeſt of the ſaid Sarah, had undertaken, &c. (mutual promiſes): And the ſaid William avers, that he, confiding in the ſaid agreement, was ready and willing to accept the ſaid Robert Hennett as an articled clerk for the ſaid term of five years, and to provide him during that period with proper meat, drink, and lodging, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid Sarah there had notice; and although the ſaid William hath always, from the time of making the ſaid agreement, hitherto well and truly performed and fulfilled the ſame in all things therein contained on his part and behalf to be performed and fulfilled, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: Yet the ſaid Sarah, not regarding the ſaid agreement, nor her ſaid promiſe and undertaking ſo by her made in manner and form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid William in this behalf, hath not paid to him the ſaid William the ſaid ſum of one hundred and fifty pounds as a clerk's fee with the ſaid Robert Hennett, or the ſaid ſum of twenty pounds ſo agreed to be forfeited as aforeſaid, or any part thereof, although often requeſted ſo to do; but ſhe to do this hath hitherto wholly refuſed, and ſtill refuſes. And whereas heretofore, to wit, on the thirty-firſt day of May in the year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid William, at the like ſpecial inſtance and requeſt of the ſaid Sarah, had undertaken, and then and there faithfully promiſed the ſaid Sarah, to accept the ſaid Robert H. the ſon of the ſaid Sarah, as an articled clerk for the term of five years, and to provide him during that period with proper meat, drink, and lodging, ſhe the ſaid Sarah undertook, and then and there faithfully promiſed the ſaid William, to pay to him the ſum of one hundred and fifty pounds as a clerk's fee with the ſaid Robert Hennett; and although the ſaid William was then and there ready and willing to accept the ſaid Robert Hennett as an articled clerk for the ſaid term of five years, and to provide him during that period with proper meat, drink, and lodging, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid Sarah there had notice; Yet the ſaid Sarah, not regarding her ſaid laſt-mentioned promiſe and undertaking ſo by her made in manner and form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid William in this behalf, hath not as yet paid to him the ſaid William the ſaid laſt-mentioned ſum of one hundred and fifty pounds as a clerk's fee with the ſaid Robert Hennett, or any part thereof, although often requeſted ſo to do;

but ſhe to do this hath hitherto wholly refuſed, and ſtill refuſes ſo to do: (3d Count, work and labour, drawing deeds, &c.; 4th Count, *Quantum meruit* thereto; 5th Count, for meat, drink, &c. found and provided; 6th Count, *Quantum meruit* thereto; 7th Count, money paid; 8th Count, money had and received; 9th Count, account ſtated; and common concluſion).

Drawn by Mr. Tidd.

Special demurrer to 1ſt Count of declaration in aſſumpſit on agreement.

And the ſaid Sarah, by Benjamin Comberbach her attorney, comes and defends the wrong and injury, when, &c.; and as to the firſt Count of the ſaid declaration ſhe the ſaid Sarah ſays, that the ſame and the matters therein contained, in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law for the ſaid William to have or maintain his aforeſaid action thereof againſt the ſaid Sarah, to which ſaid firſt Count and the matters therein contained, in manner and form as the ſame are above pleaded and ſet forth, ſhe the ſaid Sarah is not under any neceſſity, nor in any ways bound by the law of the land, to anſwer; and this ſhe is ready to verify: wherefore, for want of a ſufficient firſt Count in the ſaid declaration in this behalf, the ſaid Sarah prays judgment as to the ſaid firſt Count if the ſaid William ought to have his aforeſaid action thereof maintained againſt her, &c.: And for cauſes of demurrer in law as to the ſaid firſt Count of the ſaid declaration, according to the form of the ſtatute in ſuch caſe made and provided, the ſaid Sarah aſſigns and ſhews to the Court here the cauſes following, to wit: For that the ſaid William hath not in or by his ſaid firſt Count of his ſaid declaration ſtated, averred, or ſhewn, nor does it therein or thereby appear that he the ſaid William did execute, or was ready and willing, or tendered and offered to execute proper articles of clerkſhip in one week's time next following the making of the ſaid agreement in the ſaid firſt Count of the ſaid declaration mentioned; and for that it does not appear in or by the ſaid firſt Count of the ſaid declaration that any articles of clerkſhip were ever drawn and executed by the ſaid William according to the tenor and effect of the ſaid agreement; and alſo, for that it is not ſtated in the ſaid firſt Count that the ſaid Sarah made any default in executing the ſaid articles in the ſaid agreement mentioned; and alſo, for that the ſaid William hath not, in or by the ſaid firſt Count of his ſaid declaration, averred or ſhewn that he the ſaid William, at any time before the commencement of the ſaid ſuit, made any ſpecial requeſt of the ſaid Sarah for payment of the ſaid ſum of one hundred and fifty pounds, or the ſaid ſum of twenty pounds, in the ſaid firſt Count of the ſaid declaration mentioned, and thereby ſuppoſed to be due and payable to the ſaid William; and for that the ſaid William hath not ſufficiently or clearly or explicitly ſtated in or by his ſaid firſt Count that the ſaid Sarah forfeited or became liable to pay the ſaid William the ſaid ſum of twenty pounds in the ſaid agreement mentioned, and

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agreed to be forfeited by the party making default in performing the ſame, or ſhewn a ſufficient breach thereof from whence ſuch forfeiture may appear; and for that the ſaid firſt Count is in other reſpects uncertain, inſufficient, and informal: And as to the ſaid ſecond Count of the ſaid declaration, and alſo as to all the promiſes and undertakings in the third, fourth, fifth, ſixth, ſeventh, eighth, and ninth Counts of the ſaid declaration mentioned, except as to one pound eleven ſhillings and ſixpence, parcel of the ſaid ſeveral ſums of money therein contained, ſhe the ſaid Sarah ſays, that ſhe did not undertake or promiſe in manner and form as the ſaid William hath above thereof complained againſt her; and of this ſhe puts herſelf upon the country, &c.; and as to the ſaid ſum of one pound eleven ſhillings and ſixpence, parcel, &c. ſhe the ſaid Sarah ſays, that the ſaid William ought not to have or maintain his aforeſaid action againſt her to recover any more or greater damages than one pound eleven ſhillings and ſixpence in this behalf; becauſe ſhe ſays, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid third, fourth, fifth, ſixth, ſeventh, eighth, and ninth Counts of the ſaid declaration mentioned as to ſaid ſum of one pound eleven ſhillings and ſixpence, parcel, &c. and before the commencement of this ſuit, to wit, on the day of in the year of Our Lord 179 , ſhe the ſaid Sarah tendered and offered to pay to the ſaid William the ſaid ſum of one pound eleven ſhillings and ſixpence, parcel, &c. to receive which of the ſaid Sarah he the ſaid William then and there wholly refuſed: And the ſaid Sarah further ſaith, that ſhe the ſaid Sarah, from the time of the making of the ſaid ſeveral promiſes and undertakings in the ſaid third, fourth, fifth, ſixth, ſeventh, eighth, and ninth Counts in the ſaid declaration mentioned, as to the ſaid ſum of one pound eleven ſhillings and ſixpence, parcel, &c. always hitherto hath been and ſtill is ready to pay to the ſaid William the ſaid ſum of one pound eleven ſhillings and ſixpence, and now brings the ſame into court here ready to be paid to the ſaid William, if he the ſaid William will accept the ſame; and this ſhe the ſaid Sarah is ready to verify: wherefore ſhe prays judgment if the ſaid William ought to have or maintain his aforeſaid action againſt her the ſaid Sarah, to recover any more or greater damages than one pound eleven ſhillings and ſixpence in this behalf.

THO. BARROW.

LONDON, *ſſ.* Margaret Elderton, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of Benjamin Cleeve deceaſed, at the time of his death, unadminiſtered by Maria Cleeve deceaſed, who in her lifetime, and at the time of her death, was executrix of the laſt will and teſtament of the ſaid Benjamin Cleeve deceaſed, with the will of the ſaid Benjamin Cleeve annexed, complains of John Biggin, being, &c.: for that whereas, on the thirty-firſt day of May A. D. 1749, to wit,

Declaration at ſuit of an adminiſtrator *de bonis non*, &c. upon a ſpecial promiſe *to return inſurance money*, if reſtitution ſhould be made by the Spaniards who had taken the ſhip.

wit, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said B. Cleeve in his lifetime, at the special instance and request of the said John, had paid to him the said John ninety-eight pounds for one hundred pounds insurance on a certain ship called the Mary, Thomas Nesbitt master, from Port Royal in Jamaica to London, which ship was taken by the Spaniards and carried into the Havannah, and condemned some time after the cessation of arms, to wit, between Great Britain and Spain, which kingdoms had then lately been at war; and as there was the greatest reason to imagine that satisfaction would be made by the Spaniards for the said ship, cargo, and freight, as the said John then and there alledged, he the said John then and there, to wit, on the day and year aforesaid, at London, &c. &c. aforesaid, undertook, and faithfully promised the said B. Cleeve in his lifetime, that he the said John would use his utmost endeavours in soliciting restitution for the same, and to repay to the said B. Cleeve, or his order, his the said B. Cleeve's proportion of what might be recovered thereon (necessary expences being first allowed): And the said Margaret, administratrix in form aforesaid, in fact further saith, that the said John did *afterwards, to wit, in the lifetime of the said B. Cleeve, that is to say, on the 30th of January A. D. 1761, at London, &c. aforesaid*, recover restitution for the said ship, cargo, and freight; and that the said Benjamin Cleeve's proportion of what was recovered thereon (necessary expences being first allowed) amounted unto a large sum of money to wit, unto the sum of ninety-seven pounds, by means whereof the said John, according to the tenor of his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said Benjamin in his lifetime, a large sum of money, to wit, the sum of ninety-seven pounds, that is to say, at London, &c. aforesaid; of all which premises the said John afterwards, to wit, on the day and year last mentioned, there had notice.

2d Count. And whereas the said John afterwards, in the lifetime of the said Benjamin Cleeve, to wit, on, &c. at, &c. was indebted to the said Benjamin Cleeve in one hundred pounds of lawful, &c. for, &c. (money had and received, lent and advanced, and laid out, expended, and paid for the said John; *assumpsit* accordingly): Yet the said John, not regarding his aforesaid several promises and undertakings so by him made in this behalf as aforesaid, but contriving, &c. to deceive, &c. the said Benjamin Cleeve in his lifetime, and the said Maria, executrix as aforesaid, since his death, and the said Margaret, administratrix as aforesaid, since the respective deaths of the said Benjamin and Maria, in this behalf (to which said Margaret administration of all and singular the goods and chattels, rights and credits, which were of the said Benjamin at the time of his death unadministered by the said Maria Cleeve, executrix as aforesaid, with the will of the said Benjamin annexed, was, by Thomas by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan, on the twenty-sixth day of June A. D. 1766, to wit, at L. &c. aforesaid,

aforeſaid, in due form of law committed), hath not as yet paid the ſaid ſeveral ſums of money, or any part thereof, either to the ſaid Benjamin in his lifetime, or to the ſaid Maria, executrix as aforeſaid, ſince his death, or to the ſaid Margaret, adminiſtratrix as aforeſaid, ſince the reſpective deaths of the ſaid Benjamin and Maria, or to either of them (although to do this the ſaid John was requeſted by the ſaid Benjamin in his lifetime oftentimes, and by the ſaid Maria, executrix as aforeſaid, in her lifetime, after the death of the ſaid Benjamin, oftentimes, and by the ſaid Margaret, adminiſtratrix as aforeſaid, ſince the reſpective deaths of the ſaid Benjamin and Maria, to wit, on the twenty-firſt day of July A. D. 1776 aforeſaid, and often afterwards, to wit, at L &c. aforeſaid); but he to do this hath hitherto wholly refuſed, and ſtill refuſes, to pay the ſame, or any part thereof, to the ſaid Margaret, adminiſtratrix as aforeſaid. (3d Count like the 1ſt, only ſtating the recovery of reſtitution to be *afterwards, that is to ſay, after the death of the ſaid Benjamin, and in the lifetime of the ſaid Maria, executrix of the ſaid Benjamin, to wit, on, &c. at, &c.* Add a concluſion to this Count. 4th Count like the 1ſt, only ſtating the recovery of reſtitution to be *afterwards, to wit, after the death of the ſaid Benjamin and Maria, executrix as aforeſaid, that is to ſay, in the lifetime of the ſaid Margaret, adminiſtratrix as aforeſaid to wit, on, &c. at, &c. aforeſaid.* 5th Count, money had and received to the uſe of the ſaid Margaret, adminiſtratrix as aforeſaid): Yet the ſaid John, not regarding, &c. (common concluſion to the two laſt Counts; damages two hundred pounds; ſuit, &c.) And the ſaid Margaret, adminiſtratrix in form aforeſaid, brings into court here the letters of adminiſtration of the ſaid archbiſhop (with the will of the ſaid Benjamin annexed), which letters of adminiſtration ſufficiently teſtify to the Court here the granting of the adminiſtration as aforeſaid in form aforeſaid to the ſaid Margaret, the date whereof is the day and year in that behalf above mentioned. (Pledges, &c)

SURRY, to wit. Michael Salmon was attached to anſwer John Soans, eſquire, treaſurer to the guardians of the poor of the pariſh of Streatham, in the county of Surry, in a plea of treſpaſs on the caſe; and whereupon the ſaid John, by Thomas Burton his attorney, complains: for that whereas, before the making of the agreement, and of the promiſes and undertakings hereafter mentioned, the ſaid John was, and from thenceforth hitherto hath been, and ſtill is, treaſurer to the guardians of the poor of the pariſh of S. in the county of S. duly appointed by virtue of an act of parliament made at the ſeſſion of parliament of our lord the king held at Weſtminſter in the thirtieth year of his preſent majeſty's reign, intitled, "An Act for providing a Workhouſe for, and for the better Relief and Employment of the Poor of the Pariſh of S. in the County of S. and for appointing an additional Overſeer for the better Government of the Poor of the ſaid Pariſh." And the ſaid Michael

Declaration C. B at ſuit the treaſurer the guardians the poor a *ſurveyor* contract to ſign a plan for workhouſe rected by act parliament perintend building, the workmen bills, &c. for allowing workmen than he &c. &c.

Michael during all the time aforeſaid was the ſurveyor of the works to the ſaid guardians of the poor of the pariſh of S. in the county of S. to wit, at the pariſh of S. aforeſaid, in the ſaid county of Surry: and the ſaid John and Michael reſpectively being and continuing ſuch treaſurer and ſurveyor as aforeſaid, heretofore, to wit, on the fifth of July A. D. 1790, at the pariſh aforeſaid, in the county aforeſaid, it was propoſed and reſolved upon by and amongſt the guardians of the poor of the ſaid pariſh for the time being, by virtue of the ſaid act to erect, build, provide, and furniſh a certain erection and building called a workhouſe, for the uſe of the poor of the ſaid pariſh, for the well-governing and managing of the poor thereof: and thereupon, at the ſpecial inſtance and requeſt of the ſaid Michael, it was agreed between the ſaid guardians of the poor of the ſaid pariſh for the time being and the ſaid M. that he the ſaid M. as ſuch ſurveyor as aforeſaid, ſhould and would then and there, for a reaſonable reward to be therefore paid him, make and prepare a deſign, plan, and elevation of the ſaid intended building, and ſuperintend the erecting, building, and finiſhing the ſame, and ſhould and would, as ſuch ſurveyor as aforeſaid, honeſtly, faithfully, and accurately ſurvey and make a true and faithful certificate of all the work to be from time to time done by the different artificers, workmen, and labourers in and about the building and completing the ſaid workhouſe, and ſhould and would from time to time, when and as often as payment ſhould be called for by the artificers and workmen to be from time to time employed in and about the ſaid intended building for and on account of work and labour done, and materials found and provided in reſpect thereof, well and faithfully inſpect the ſeveral bills, accounts, and charges of the ſaid ſeveral artificers and workmen, and well and truly ſtate, certify, and ſhew to the ſaid guardians of the poor of the ſaid pariſh for the ſaid time being, how much ought to have been allowed for the ſame, preparatory to the payment thereof: and the ſaid agreement being ſo made as aforeſaid, afterwards, to wit, on the day and year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid (mutual promiſes): And the ſaid John in fact ſays, that although the ſaid guardians of the poor of the ſaid pariſh for the time being, confiding in the ſaid promiſes and undertaking of the ſaid M. did, in purſuance of the ſaid agreement, employ the ſaid M. upon the terms therein expreſſed, and in the execution thereof as ſuch ſurveyor as aforeſaid; and although the ſaid M. did, in purſuance of the ſaid agreement, make a certain deſign, plan, and elevation of the ſaid intended building, which was afterwards approved of by the guardians of the poor of the ſaid pariſh of S. for the time being; and although certain artificers, workmen, and labourers were accordingly employed to erect, build, and finiſh the ſaid intended building, purſuant to the ſaid deſign, plan, and elevation of the ſaid Michael, and did accordingly proceed, build, and finiſh the ſame, under the inſpection and direction of the ſaid M. as ſuch ſurveyor as aforeſaid; and although after the ſaid artificers, workmen, and labourers had done

and

and performed their work and labour in and about the erecting, building, and finiſhing the ſaid building, the ſaid M. as ſuch ſurveyor as aforeſaid, did ſurvey and meaſure the work ſo done by the ſaid artificers, workmen, and labourers reſpectively in and about the ſaid building, preparatory to the payment of their reſpective bills; and although the ſaid guardians of the poor of the ſaid pariſh for the time being have always, from the time of making the ſaid agreement, hitherto done and performed, and been ready and willing to do and perform, all things in the ſaid agreement contained on their part and behalf to be performed and fulfilled, according to the true intent and meaning of the ſaid agreement, to wit, at the pariſh aforeſaid in the county aforeſaid: Yet the ſaid M. not regarding the ſaid agreement, nor his ſaid promiſe and undertaking in that behalf made as aforeſaid, nor his duty as ſuch ſurveyor as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid guardians of the poor of the ſaid pariſh for the time being, did not honeſtly, faithfully, and accurately ſurvey and meaſure the ſaid work of the ſaid ſeveral artificers, workmen, and labourers ſo employed in and about the erecting, building, and finiſhing the building as aforeſaid; but on the contrary thereof was diſhoneſt, unfaithful, and inaccurate in the ſurvey and admeaſurement ſo by him the ſaid M. made of the ſaid work as aforeſaid, and made a diſhoneſt and falſe certificate of a great part, to wit, of the bricklayer's, carpenter's, glazier's, plaiſterer's, and joiner's work, done in and about the ſaid building, to the ſaid guardians of the poor of the ſaid pariſh, to wit, at the pariſh of S. aforeſaid in the county aforeſaid; by reaſon of which ſaid falſe and inaccurate ſurvey, admeaſurement, and certificate of the ſaid M. of the ſaid work, the ſaid guardians of the poor of the ſaid pariſh for the time being, relying on the truth and accuracy thereof, and on the honeſty and integrity of the ſaid M. in the premiſes, not only have been induced to pay divers large ſums of money, amounting in the whole to a large ſum of money, to wit, to the ſum of five hundred pounds of lawful money of Great Britain, in their own wrong, to ſeveral of the ſaid artificers, workmen, and labourers, ſo employed in and about the ſaid building, in diſcharge of their ſeveral bills, over and above the work done by them, and to a greater amount than they were entitled to receive for the ſame, but the ſaid guardians of the poor of the ſaid pariſh were, on occaſion of the ſaid premiſes, forced and obliged to lay out and expend divers other large ſums of money, amounting in the whole to the ſum of other five hundred pounds, as well in procuring the ſaid building to be reſurveyed and remeaſured by other and different ſurveyors, in order to aſcertain the true meaſure and value of the ſame, and the amount of the money overpaid on account thereof by the means aforeſaid, as alſo in bringing and proſecuting divers actions at law for the recovery thereof, to wit, at the pariſh aforeſaid in the county aforeſaid. And whereas (2d Count, and promiſe to the guardians on agree-

2d Count, promiſe to the guardians of the poor, at the requeſt of defendant, to permit and ſuffer him to ſurvey, &c. preparatory to payment of the bills.

ment

d Count.

ment to ſurvey and admeaſure certain brick-work, plaiſterer's work, &c. as in 1ſt Count.) And whereas the ſaid guardians of the poor had appointed the ſaid M. &c. promiſed them to render a juſt and true account and certificate of all the work, and ſurvey preparatory to the payment of the bills (on a promiſe likewiſe to the guardians of the poor. One breach to both theſe Counts like the firſt; Counts for money had and received to the uſe of plaintiff, as treaſurer, &c.; account ſtated; and common concluſion.) THO. BARROW.

Declaration at the ſuit of an *adminiſtrator* (to whom adminiſtration was granted, as the next of kin reſiding out of the kingdom), againſt defendant, who had given the inteſtate promiſſory notes to pay 200 guineas when he ſhould be worth 1000l. In conſideration of five guineas in hand; and in conſideration of other five guineas in hand, to pay fifty guineas when he ſhould be married; averring both events to have happened in the teſtator's lifetime.

LONDON, *ſſ.* John Way, eſquire, adminiſtrator of all and ſingular the goods, chattels, rights, and credits which were of David Scott, eſquire, at the time of his death, who died inteſtate, for the uſe and benefit of John Hay, eſquire, the nephew and one of the next of kin of the ſaid David Scott, eſquire, deceaſed, complains of Colin Machenzee, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, in a plea of treſpaſs on the caſe, &c.: for that whereas, in the lifetime of the ſaid David Scott, to wit, on the thirty-firſt day of January in the year of Our Lord 1776, at London, in the pariſh of St. Mary-le Bow in the ward of Cheap, in conſideration that the ſaid David Scott, at the ſpecial inſtance and requeſt of the ſaid Colin, had then and there paid to the ſaid Colin the ſum of five guineas, he the ſaid Colin undertook, and then and there faithfully promiſed the ſaid David Scott, to pay to him the ſaid David Scott one hundred guineas, when he the ſaid Colin ſhould become poſſeſſed of five thouſand pounds: And the ſaid John avers, that afterwards, to wit, on the twentieth day of April in the year of Our Lord 1785, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid David died; and that afterwards, to wit, on the ſixth day of May in the year laſt aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid David at the time of his death, who died inteſtate, was granted to the ſaid John as the lawful attorney of the ſaid John Hay, the nephew and one of the next of kin to the ſaid David, by John, by Divine Providence archbiſhop of Canterbury, primate of all England, and metropolitan; of all which premiſes the ſaid Colin afterwards, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice: And the ſaid John Way further ſays, that afterwards, to wit, on the firſt day of January in the year of Our Lord 1780, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid John became poſſeſſed of five thouſand pounds; by reaſon whereof the ſaid Colin then and there became liable to pay, and ought to have paid, to the ſaid John Way, as ſuch adminiſtrator as aforeſaid, the ſaid ſum of one hundred guineas, to wit, at London aforeſaid in the pariſh and ward aforeſaid: And whereas alſo in the lifetime of the ſaid David Scott, to wit, on the thirty-firſt day of January in the year of Our Lord 1776, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration

ſideration that the ſaid David Scott, at the ſpecial inſtance and requeſt of the ſaid Colin, had paid to the ſaid Colin, who was then and there ſole and unmarried, the ſum of five guineas, he the ſaid Colin undertook, and then and there faithfully promiſed the ſaid David, to pay to him the ſaid David or order fifty guineas upon the day of the marriage of him the ſaid Colin: And the ſaid John avers, that afterwards, to wit, on the twentieth day of April in the year of Our Lord 1785, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid David died; and that afterwards, to wit, on the ſixth day of May in the year laſt aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid David at the time of his death, who died inteſtate, was in form aforeſaid granted to the ſaid John Way; of all which laſt-mentioned premiſes the ſaid Colin afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice: And the ſaid John Way further ſays, that afterwards, to wit, on the nineteenth day of September in the year of Our Lord 1785, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid Colin did marry and take to his wife one Janet Spratt, ſpinſter; by reaſon whereof the ſaid Colin thereupon became liable to pay, and then and there ought to have paid, to the ſaid John Way, as ſuch adminiſtrator as aforeſaid, the ſaid ſum of fifty guineas, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: Yet the ſaid Colin, not regarding his ſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid John Way, as adminiſtrator as aforeſaid, in this reſpect, hath not yet paid the ſaid ſeveral ſums of money, or either of them, or any part thereof, to the ſaid John Way (although ſo do he the ſaid Colin was requeſted by the ſaid John Way afterwards, to wit, on the ſame day and year laſt aforeſaid, and often afterwards, at London aforeſaid, in the pariſh and ward aforeſaid); but he to pay the ſame hath hitherto wholly refuſed, and ſtill doth refuſe. (Add Counts for money lent and advanced; laid out, expended, and paid; money had and received; account ſtated: Yet the ſaid Colin, not regarding his four laſt-mentioned promiſes and undertakings in manner and form aforeſaid made, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid David in his lifetime, and the ſaid John, to whom, as the lawful attorney of the ſaid John Hay the nephew, and one of the next of kin of the ſaid David Scott, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid David Scott deceaſed, for the uſe and benefit of the ſaid John Hay his nephew, and one of the next of kin as aforeſaid, by John, by Divine Providence archbiſhop of Canterbury, primate of all England, and metropolitan, on the eighth day of May in the year of Our Lord 1785, at London aforeſaid, in the pariſh and ward aforeſaid, was in due form of law committed, ſince the deceaſe of the

* Day of Marriage, &c.

ſaid

ſaid David, hath not yet paid the ſaid four laſt-mentioned ſums of money, or any or either of them, or any part thereof, to the ſaid David in his lifetime, or to the ſaid John long ſince his death (although to pay the ſame he the ſaid Colin was requeſted by the ſaid David in his lifetime oftentimes by the ſaid John, after the deceaſe of the ſaid David, to wit, on the firſt day of January in the year of Our Lord 1786, and oftentimes ſince, to wit, at London aforeſaid, in the pariſh and ward aforeſaid); but he to pay the ſame, or any part thereof, hath hitherto wholly refuſed, and to pay the ſame to the ſaid John Way doth ſtill refuſe, to the ſaid John Way, as ſuch adminiſtrator as aforeſaid, his damage of three hundred pounds; and therefore he brings ſuit, &c; and he alſo brings into court here, &c. W. RUSSELL.

Special aſſumpſit againſt a maſter of a ſhip, for not proceeding to ſail to take a load of cod-fiſh to Scotland, whereby the fiſh became putrid.

G. S. H. C. T. E. and E. B. complain of E. B. being, &c. for this, to wit: that whereas the ſaid G. S. &c. before the making of the promiſe and undertaking of the ſaid E. B. hereafter next mentioned, had bought *of one J. B. of Aberdeen, in that part of Great Britain called Scotland*, a certain large quantity of cod-fiſh, of a large value, *to be cured by the ſaid J. B.* at Fraſerburgh in Scotland, and to be there delivered *by the ſaid J. B.* to the ſaid G. S. &c. or to their order: And whereas the ſaid E. B. before and at the time of the making of his promiſe and undertaking hereafter next mentioned, was maſter of a certain ſhip or veſſel *called the Counteſs of Sutherland*, which was then in the river of Thames in the port of London, to wit, at L. aforeſaid, &c.: and thereupon it was then and there, to wit, on, &c. at, &c. agreed between the ſaid G. S. &c. and the ſaid E. B. that the ſaid E. B. ſhould ſail immediately and proceed with his ſaid ſhip to F. aforeſaid, and that the ſaid plaintiff ſhould put on board his ſaid ſhip, upon her arrival at F. aforeſaid, three hundred barrels of the ſaid cod-fiſh, and ſhould pay him therefore the ſum of three ſhillings for each and every of the ſaid three hundred barrels, for the freight thereof; *and that if, on the arrival of the ſaid ſhip at F. aforeſaid, the ſaid defendant ſhould find there a greater quantity of the ſaid cod-fiſh prepared than the ſaid three hundred barrels, then he the ſaid E. B. might take and load on board his ſaid ſhip any greater number of barrels of the ſaid cod-fiſh which he choſe, at and for the ſame freight, to be paid therefore to the ſaid E. B. by the ſaid G. S. &c.*; and that the ſaid E. B. for ſuch freight as aforeſaid, ſhould bring and convey in his ſaid ſhip the ſaid cod-fiſh ſo to be loaden on board his ſaid ſhip as aforeſaid, from F. aforeſaid to the port of L. aforeſaid, and there, to wit, at the port of L. aforeſaid, ſhould deliver the ſame to the ſaid G. S. (the perils and dangers of the ſea only excepted); and the ſaid agreement being ſo made as aforeſaid (mutual promiſes): And the ſaid G. S. &c. in fact ſay, that the ſaid E. B. did not ſail immediately after the making of the ſaid agreement, and *proceed* with his ſaid ſhip to F. aforeſaid, as he might and ought to have done; but on the contrary thereof

thereof neglected to PROCEED with the ſaid ſhip to F. aforeſaid, for a long and unreaſonable time, to wit, for the ſpace of ſix weeks next after the making of the ſaid agreement, and of the ſaid promiſe and undertaking of the ſaid E. B ſo by him in that behalf made as aforeſaid, and although the ſaid E. B. did, after ſuch long and unreaſonable time, ſail to F. aforeſaid, and take on board the ſaid ſhip the ſaid three hundred barrels of the ſaid cod-fiſh, and convey and bring the ſame to the port of L. aforeſaid, yet, by reaſon of the delay and neglect aforeſaid of the ſaid E. B. all the ſaid cod-fiſh became and were putrid, rotten, unwholeſome, and not marketable, and of no value to the ſaid G. S. &c. which otherwiſe would have been ſound, ſweet, wholſome, and of great value, to wit, of the value of ſix hundred pounds, that is to ſay, at L. aforeſaid, &c. (2d Count like the *firſt*, omitting what is in Italic. 3d Count, that plaintiffs had bought cod-fiſh, and that defendant was maſter of a ſhip, as in 2d Count, then as follows:) And whereas the ſaid G. S. &c. having bought the ſaid cod-fiſh as aforeſaid, and being deſirous of conveying the ſame from F. aforeſaid to L. aforeſaid, afterwards, to wit, on, &c. at, &c. aforeſaid, at the ſpecial inſtance and requeſt of the ſaid E. B. ſo being maſter of the ſaid laſt-mentioned ſhip or veſſel, retained and employed him the ſaid E. B. for that purpoſe: and thereupon, in conſideration thereof, and alſo in conſideration of certain freight to be therefore paid by the ſaid G. S. &c. to the ſaid E. B. he the ſaid E. B. then and there undertook, &c. *to ſet ſail and proceed with the ſaid ſhip or veſſel, without loading the ſame, from the port of L. aforeſaid to F. aforeſaid, and then, to wit, at F. aforeſaid, to take on board of the ſaid laſt-mentioned ſhip or veſſel without delay, on her arrival there,* a certain cargo, conſiſting of divers, to wit, three hundred barrels of the ſaid laſt-mentioned cod-fiſh, and to convey the ſaid cargo in the ſaid ſhip or veſſel from F. aforeſaid to the port of L. aforeſaid, and then, to wit, at the port of L. aforeſaid, to deliver the ſame to the ſaid G. S. &c. to wit, at L. aforeſaid, &c.: Yet the ſaid E. B. not regarding, &c. did not proceed with the ſaid ſhip or veſſel without loading the ſame from the port of L. aforeſaid to F. aforeſaid, nor there, to wit, at F. aforeſaid, take on board the ſaid ſhip or veſſel without delay, on her arrival there, the ſaid cargo of the ſaid laſt-mentioned cod-fiſh, or any part thereof (although the ſaid cargo was ready to be delivered to the ſaid E. B. on his arrival at F. aforeſaid); but on the contrary thereof, he the ſaid E. B. after the making of his ſaid laſt-mentioned promiſe and undertaking, did, at the port of L. aforeſaid, load the ſaid ſhip or veſſel, and did afterwards ſet ſail and proceed with the ſaid ſhip or veſſel ſo loaded for the port of L. aforeſaid to Inverneſs in S. aforeſaid, and there, to wit, at I. aforeſaid, unloaded the ſaid ſhip or veſſel before he proceeded to take and took on board thereof the ſaid cargo of the ſaid laſt-mentioned cod-fiſh at F. aforeſaid. ſo that, although he the ſaid E. B. did afterwards, to wit, on the thirty-firſt March in the year aforeſaid, take on board of the ſaid ſhip or veſſel, at

2d Count.

3d Count.

F. aforesaid, the said cargo of the said last-mentioned cod-fish, and did convey the same in the said ship or vessel from F. aforesaid to the port of L. aforesaid, and there, to wit, at the port of L. aforesaid, did deliver the same to the said G. S. &c.: Yet the said G. S. &c. in fact say, that by means of the delay occasioned by the loading and unloading of the said ship or vessel as aforesaid, the said cargo of the said last-mentioned cod-fish, which would otherwise have been sweet, wholesome, and marketable, and of a large value, to wit, of the value of six hundred pounds, became and was putrid, corrupt, rotten, unwholesome, and not marketable, and was thereby rendered of no value to the said G. S. &c. to wit, at L. aforesaid, &c. (4th Count, on a promise to set sail immediately, and proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, and there, to wit, at F. aforesaid, to take on board of the said last-mentioned ship or vessel, &c. *post.* Breach, that the said E. B. did not set sail immediately after the making of his said last-mentioned promise and undertaking, and proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, nor there, to wit, at F. aforesaid, take on board of the said last-mentioned ship or vessel the said cargo of the said last-mentioned cod fish; but on the contrary thereof, he the said E. B. after the making of the said last-mentioned promise and undertaking, for a long space of time, to wit, for the space of six weeks next after the making of that promise and undertaking, forbore and neglected to proceed with the said last-mentioned ship or vessel from the port of L. aforesaid to F. aforesaid, contrary to the form and effect of the said last-mentioned promise and undertaking made by him in that behalf as aforesaid, to wit, at L. aforesaid; and although he the said E. B. afterwards, and after such neglect and delay to proceed as aforesaid, sail to and arrive at F. aforesaid, and there take on board of the said last-mentioned ship or vessel the said cargo of the said last-mentioned cod fish, and did convey the same in the said last-mentioned ship or vessel from F. aforesaid to the port of L. aforesaid, and there, to wit, at the port of L. aforesaid, deliver the same to the said plaintiff, to wit, at L. aforesaid, &c. Yet the said G. S. &c. in fact say, that by means of the said last-mentioned neglect and delay of the said E. B. as above mentioned, the said last-mentioned cargo of the said cod-fish, which otherwise would have been sweet, &c. became and was putrid, &c. to wit, at L. aforesaid, &c. Money laid out, had, and received; and common conclusion to those two Counts.)

4th Count.

T. DAVENPORT.

Declaration where one J. G. being put his horse to stand at livery at plaintiff's stables, let the horse stay so long that he was indebted to plaintiff in a large sum of money for keeping said horse; and said J. G. selling said horse to defendant, gave plaintiff orders to let defendant have the horse when he sent for him, and told plaintiff that defendant should pay what money was due for keeping said horse: defendant soon after sent a messenger for the horse and plaintiff's bill, and promised to pay plaintiff the money due if he would send said horse and his bill, but now refuses to pay plaintiff the debt, &c. (a).

MIDDLESEX, ss. Joseph Hodgson, late of, &c. was attached to answer to Bleaham in a plea of trespass on the

(a) This is a good consideration, Hutt. 101.

case

caſe, &c.; and thereupon ſaid B. by A. B. his attorney, complains: for that whereas he the ſaid B. now keepeth, and for the ſpace of one year and more now laſt paſt hath kept, as maſter thereof, certain ſtables, commonly called livery-ſtables, for ſtabling, feeding, and keeping for hire, of the horſes of ſuch perſons as have, during that time, ſet up and put their horſes reſpectively at livery with the ſaid B. there, to wit, at W. in ſaid county of M. aforeſaid: And whereas, while he ſaid B. ſo kept, as maſter thereof, the ſaid ſtables for the purpoſe aforeſaid, to wit, on the day of A. D. 1750, and from thence for a long time, to wit, until and upon twenty-firſt January A. D. 1750 aforeſaid, at W. aforeſaid, a certain horſe of one J. G. was by ſaid J. G. ſet up and put to livery with ſaid B. in and at his ſaid ſtables, and was, during all that time, there by the ſaid B. at the inſtance and requeſt of ſaid G. ſtabled, kept, and fed for hire, whereby the ſaid J. G. on the ſaid twenty-firſt day of January in the year aforeſaid, at W. aforeſaid, was indebted to ſaid B. in a large ſum of money for the ſtabling, keeping, and feeding of the ſaid horſe, and for horſe-meat, ſtabling, and attendance found and provided there by the ſaid B. for the ſaid horſe, and in and about ſaid feeding and keeping thereof; and ſaid J. G. ſo being indebted as aforeſaid, and ſaid horſe ſo being and continuing at and in the ſaid ſtables of ſaid B. at livery as aforeſaid, he the ſaid J. G. on ſame day and year laſt aforeſaid, at W. aforeſaid, ordered and directed the ſaid B. to let the ſaid J. H. have the ſaid horſe, and alſo a ſaddle and bridle, &c. which then belonged to ſaid J. G. and came to the ſaid ſtables with the ſaid horſe, whenever ſaid J. H. ſhould call for the ſaid horſe, and acquainted the ſaid B. that the ſaid J. H. would pay the ſaid debt that was ſo due and owing from the ſaid J. G. to ſaid B. for the ſaid horſes ſtanding at livery at ſaid ſtables of the ſaid B.: and thereupon the ſaid J. H. afterwards, to wit, on ſame day and year laſt aforeſaid, at W. aforeſaid, ſent to the ſaid B. a certain meſſenger (to the ſaid B. then unknown), for ſaid horſe, and then and there, in conſideration that ſaid A. B. at the ſpecial inſtance and requeſt of the ſaid J. H. would ſend the ſaid horſe by that meſſenger, and would alſo ſend the ſaid B.'s bill of the ſaid charges to the ſaid J. H. he the ſaid J. H. would pay the ſaid bill: And the ſaid B. in fact ſaith, that he the ſaid B. giving credit to the ſaid promiſe and undertaking of the ſaid J. H. he the ſaid B. ſent the ſaid horſe, together with the ſaid ſaddle and bridle, &c. belonging to the ſaid J. G. by the ſaid meſſenger to the ſaid J. H. and then and there alſo ſent his bill of the aforeſaid charges to the ſaid J. H. which ſaid bill then and there amounted to pounds; of all which ſaid premiſes the ſaid J. H. then and there had notice: Yet, &c. (common concluſion for non payment of bill; *indebitatus aſſumpſit* and *quantum meruit* for horſe-keeping, &c.; ditto for work and labour; common concluſion.)

Drawn by MR. WARREN.

Special *assumpsit* for not discharging plaintiff from action and imprisonment, after delivering up estate and effects.

LONDON, *ff.* Thomas Weſton complains of George Ward, being, &c. in a plea of treſpaſs on the caſe, &c.: for that whereas, at the time of the making of the promiſe and undertaking of the ſaid defendant hereafter next mentioned, he the ſaid plaintiff was in the priſon of our lord the king, commonly called Wood-ſtreet Compter in the city of London, to wit, in the pariſh of St. Michael Wood ſtreet, in the ward of Cripplegate Within, to wit, upon an arreſt under and by virtue of a certain other writ of our lord the king called a *latitat*, iſſuing out of the court of our lord the king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of M.), at the ſuit of the defendant, againſt him the ſaid plaintiff and one Thomas Neſbitt, which writ was marked for bail for a large ſum of money, to wit, the ſum of two thouſand ſeven hundred and thirty-ſeven pounds and upwards, as a debt claimed by and alledged by the ſaid defendant to be due from him the ſaid plaintiff and one Thomas Neſbitt, to him the ſaid defendant: And whereas the ſaid plaintiff, at the time of the making of the promiſe and undertaking of the ſaid defendant hereafter next mentioned, was detained in cuſtody in the priſon aforeſaid, at the ſuit of the ſaid defendant, for want of bail to the ſaid writ, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid: And whereas the ſaid plaintiff, at the time of the making of the promiſe and undertaking of the ſaid defendant hereafter next mentioned, was poſſeſſed of certain other leaſehold premiſes, to wit, of fourteen meſſuages or dwelling-houſes, with a certain yard called the Orchard-Houſe Yard, and a certain other meſſuage or dwelling houſe ſituate in the ſaid yard, with the appurtenances, ſituate in the pariſh of St. Dunſtan in the county of Middleſex aforeſaid, the ſaid yard being adjoining to the river of Thames there, and the ſaid yard, with the appurtenances, then being uſed by the ſaid plaintiff as a timber-yard, and for the purpoſe of breaking up old ſhips and other veſſels (which buſineſs he the ſaid plaintiff then lately carried on at the ſaid yard), with the appurtenances, (1) for a long term of years, whereof a great part is yet to come and unexpired, by virtue of an indenture of leaſe granted to the ſaid plaintiff by one John Staples, and which leaſe had been by the ſaid plaintiff before then aſſigned and delivered to the ſaid defendant *upon certain truſt, to wit, for the benefit of the ſaid plaintiff*, and which leaſe was then in the poſſeſſion of the ſaid defendant, to wit, at L. aforeſaid in the pariſh and ward aforeſaid: And whereas the ſaid plaintiff was, at the time of the making of the ſaid promiſe and undertaking of the ſaid defendant hereafter next mentioned, poſſeſſed of divers goods and chattels, ſtock in trade, houſehold goods, furniture, and other things then being on the ſaid yard called the Orchard-Houſe Yard, and in the ſaid meſſuage or dwelling-houſe in the ſaid yard, with the appurtenances, *and of divers books, papers, and vouchers, belonging to his buſineſs aforeſaid*, as of his own proper goods and chattels, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid: And whereas the ſaid plaintiff, being ſo poſſeſſed of the ſeveral and reſpective premiſes

(1) "the ſame premiſes having been demiſed to him ſaid plaintiff:"

as

as aforeſaid, and ſo being in cuſtody in the ſaid priſon at the ſuit of the ſaid defendant, under and by virtue of the aforeſaid writ for want of bail thereto as aforeſaid, whilſt he was ſo in cuſtody for the cauſe aforeſaid, and whilſt he was ſo poſſeſſed of the ſeveral and reſpective premiſes aforeſaid, in manner aforeſaid, to wit, on the twentieth day of December in the year 1773 aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid George, would *permit him the ſaid defendant to retain the aforeſaid indenture of leaſe as his own property, and the premiſes held under and by virtue thereof, for the reſidue of the term then to come therein and unexpired, and alſo would* yield and deliver up the peaceable and quiet poſſeſſion of the aforeſaid leaſehold premiſes, and all the ſaid plaintiff's ſtock in trade, and all his effects on the ſaid leaſehold premiſes (his houſehold furniture excepted), *and alſo his books, papers, and vouchers, belonging to his ſaid buſineſs*, unto the ſaid defendant, for him the ſaid defendant to retain from thenceforth for ever, as his own eſtate and effects, goods and chattels, he the ſaid defendant then and there undertook, and faithfully promiſed the ſaid plaintiff, that he the ſaid defendant would immediately afterwards *give him the ſaid plaintiff a full, free, and abſolute diſcharge from the ſaid defendant, claimed by the ſaid George from the ſaid plaintiff and Thomas N. and from which he the ſaid plaintiff had been ſo arreſted*, and diſcharge him the ſaid plaintiff from *the ſaid action, and from the ſaid arreſt, and from* the impriſonment aforeſaid *under and by virtue thereof*: And the ſaid plaintiff avers, that he, confiding in the ſaid laſt-mentioned promiſe and undertaking of the ſaid defendant, ſo by him made in the behalf as aforeſaid, did afterwards, to wit, *on the day and year laſt aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, permit him the ſaid plaintiff to retain the aforeſaid indenture of leaſe as his own property, and all and ſingular the premiſes held under and by virtue thereof, for the reſidue of the term then to come therein and unexpired, and did alſo then and there, to wit*, on the twenty-firſt day of December in the year aforeſaid, at the ſaid pariſh of St. Dunſtan, Stepney, aforeſaid, in the ſaid county of Middleſex, yield and deliver up the peaceable and quiet poſſeſſion of the aforeſaid leaſehold premiſes, and all his the ſaid plaintiff's ſtock in trade, and all his effects on the ſaid leaſehold premiſes (his houſehold furniture excepted), unto the ſaid defendant, for him the ſaid defendant to retain the ſame from thenceforth for ever as his own eſtate and effects, goods and chattels; and the ſaid defendant did then and there accept thereof, and hath from thence hitherto retained the ſaid leaſe and leaſehold premiſes, ſtock in trade, effects, goods, and chattels, as his own eſtate and effects, goods and chattels, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Thomas Weſton further ſaith, that he did afterwards, to wit, on the (1) *twenty-fourth day of December in the year aforeſaid, at L. aforeſaid, in the pariſh, &c. aforeſaid, tender, and cauſe to be tendered, unto the ſaid defendant all his the ſaid Thomas Weſton's books, papers*, to

(1) "day and year laſt aforeſaid, at L. aforeſaid, requeſt the ſaid defendant"

pers, and vouchers belonging to his said business, for him the said defendant to take, accept, keep, and retain from thenceforth as his own goods and chattels for ever, and then and there requested the said defendant to accept the same, and to give him the said plaintiff a full and free and absolute discharge from the said debt claimed by the said defendant from the said plaintiff and T. N. and for which he had been so arrested, and to discharge him the said plaintiff from the *said action, and from the said arrest, and from his* imprisonment aforesaid, *under and by virtue thereof:* Yet the said defendant, not regarding, &c. but contriving, &c. he the said defendant (1) *at the time when the said books, papers, and vouchers were so tendered to him, and always afterwards, refused to accept thereof, nor did he then, or at any other time before or afterwards, or to discharge the said* Thomas Weston from the *debt claimed by him the said defendant against the said plaintiff and T. N. or from the said action, or the said arrest, or the* imprisonment aforesaid *by virtue thereof,* although to perform his *aforesaid last-mentioned* promise and undertaking, so by him made in this behalf as aforesaid, he the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at L. aforesaid, in the parish and ward aforesaid); but he so to do (2) *hath wholly refused*; by means whereof the said plaintiff was kept and detained in the prison aforesaid against his will, and under the aforesaid arrest, *for want of bail to the said writ*, for a long time, to wit, for the space of five months next after the (3) *making of the tender of the aforesaid books, papers, and vouchers to the said defendant*, and was forced and obliged to lay out and expend a large sum of money, to wit, the sum of thirty pounds, in and about the obtaining and procuring his release and discharge from the said imprisonment, to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas, &c. &c. (There was a second Count, leaving out what is in Italic, and inserting instead thereof what is in the margin.)

J. MORGAN.

(1) "did not immediately, or within a reasonable time then next following, discharge"

(2) "neglected and refused for a long time then next following, to wit, for the space of five months then next following, to wit, at L. aforesaid, in the parish, &c. aforesaid;"

(3) "delivering up the possession of the premises aforesaid in form aforesaid,"

DECLARATIONS ON COMMON PROMISES, &c. AND BY AND AGAINST PARTICULAR PERSONS.

Indebitatus assumpsit for goods sold and delivered.

MIDDLESEX, *ff.* Joseph Reading complains of Peter Mawson, *being in the custody, &c.:* for that whereas the said defendant heretofore, to wit, on the day of A. D. at Westminster in the county of Middlesex, was indebted to the said plaintiff in pounds of lawful money of Great Britain, for divers

divers goods, wares, and merchandizes (1) *by* ſaid plaintiff before that time ſold and delivered to the ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, he ſaid defendant, in conſideration thereof, afterwards, to wit, on the day and year aforeſaid, at Weſtminſter aforeſaid, undertook and faithfully promiſed ſaid plaintiff to pay him ſaid ſum of money when he the ſaid defendant ſhould be thereto afterwards requeſted: And whereas afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time ſold and delivered to ſaid defendant divers other goods, wares, and merchandizes, he ſaid defendant undertook, and then and there faithfully promiſed ſaid plaintiff, to pay him ſo much money as he therefore reaſonably deſerved to have, when he ſaid defendant ſhould be thereto afterwards requeſted: And ſaid plaintiff avers, that he therefore reaſonably deſerved to have of the ſaid defendant other pounds of like lawful money, to wit, at Weſtminſter aforeſaid; whereof the ſaid defendant afterwards, to wit, on the day and year aforeſaid, there had notice.

(1) No occaſion for plaintiff to ſay they were *his* goods. Bull. Ni. Pri. 139.

Quantum meruit.

AND whereas, &c. &c. for the work and labour, care and diligence, of ſaid plaintiff, by him ſaid plaintiff and his ſervants before that time done, performed, and beſtowed in and about the buſineſs of ſaid defendant, and for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. (as before): And whereas, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time, by himſelf and his ſervants, done, performed, and beſtowed other his work and labour, care and diligence, in and about other the buſineſs of ſaid defendant, and for ſaid defendant, he ſaid defendant undertook, and then and there, &c. to pay ſo much, &c.: And ſaid plaintiff avers, &c. (as before).

Indebitatus aſſumpſit, work and labour by plaintiff and ſervants.

Quantum meruit.

AND whereas ſaid defendant afterwards, &c. was indebted to ſaid plaintiff in other pounds of *like* lawful money, by the ſaid plaintiff before that time laid out, expended, and paid for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c.

Money laid out, &c.

AND whereas, &c. ſaid defendant afterwards, &c. was indebted to the ſaid plaintiff in other pounds of like, &c. for money by ſaid plaintiff before that time lent and advanced to the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c.

Money lent and advanced, &c.

AND whereas ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff in other pounds of

Money had and received, &c.

like lawful money, for money by the ſaid defendant before that time had and received to the uſe of the ſaid plaintiff; and being ſo indebted, &c.

Account ſtated. AND whereas ſaid defendant afterwards, to wit, on, &c. at, &c. accounted with ſaid plaintiff of and concerning divers other ſums of money before that time due and owing from the ſaid defendant to the ſaid plaintiff, and then being in arrear and unpaid, and upon that accounting he the ſaid defendant was then and there found in arrear to the ſaid plaintiff in another large ſum of money, to wit, the ſum of pounds of like lawful money; and being ſo found in arrear, &c.

YET the ſaid defendant, not regarding his ſaid ſeveral promiſes and undertakings ſo by him made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid plaintiff in this behalf, hath not as yet paid the ſaid ſeveral ſums of money in thoſe promiſes and undertakings, or any part thereof, or any part thereof, to the ſaid plaintiff, though ſo to do the ſaid defendant afterwards requeſted by ſaid plaintiff, afterwards, to wit, on the day and year aforeſaid, and often afterwards, to wit, at A. aforeſaid); but he ſo to do hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid plaintiff of pounds, for which he brings his ſuit, &c.

If in the king's Bench add pledges, &c.

Money laid out, and ditto lent, and ditto had and received, in one Count. AND whereas ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff in pounds of lawful, &c. for money by ſaid plaintiff before that time laid out, expended, and paid for ſaid defendant, at his ſpecial inſtance and requeſt, and for other money by the ſaid plaintiff before that time lent and advanced to the uſe of ſaid defendant, and at his like ſpecial inſtance and requeſt, and for other money by the ſaid defendant before that time had and received to the uſe of the plaintiff; and being ſo indebted, &c.

Indebitatus aſſumpſit for horſe-meat, ſtabling, and attendance. *Quantum meruit.* FOR horſe-meat, ſtabling, and attendance by ſaid plaintiff before that time found, provided, and ſupplied, for and about divers horſes, mares, and geldings of ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time found, provided, and ſupplied other horſe-meat, ſtabling, and attendance for divers other mares, &c. &c. of ſaid defendant, and for ſaid defendant, he the ſaid defendant undertook, &c. to pay, &c. ſo much as, &c.: And the ſaid plaintiff avers, that, &c.

FOR

TAYLORS, SAILORS, &c.

Indebitatus, aſſumpſit for goods bargained and ſold. *Quantum meruit.*

FOR divers goods, wares, and merchandizes by the ſaid plaintiff before that time bargained and ſold to the ſaid defendant at his like ſpecial inſtance and requeſt; and being ſo indebted, &c in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid defendant, had before that time bargained and ſold to the ſaid defendant divers other goods, wares, and merchandizes, he ſaid defendant undertook, &c. to pay, &c. ſo much as, &c.: And ſaid plaintiff avers, that, &c.

Indebitatus aſſumpſit for work and labour generally.

AND whereas ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to ſaid plaintiff in other pounds of like lawful, &c. for the work and labour, care and diligence, of ſaid plaintiff, by him ſaid plaintiff before that time done, performed, and beſtowed in and about the buſineſs of the ſaid defendant, and for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly.

Work and labour by plaintiff and ſervants with horſes and carriages.

FOR the work and labour, care and diligence, of ſaid plaintiff, before that time done, performed, and beſtowed by him ſaid plaintiff by himſelf and his ſervants, and with his horſes, carts, and carriages, in and about the buſineſs of the ſaid defendant, and for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly; then add Counts for work and labour generally; money laid out, &c.; and common concluſion.)

Work and labour as a taylor and materials found.

FOR the work and labour, care and diligence, of ſaid plaintiff, as a *taylor*, by him ſaid plaintiff before that time done, performed, and beſtowed in and about the buſineſs of the ſaid defendant, and at his ſpecial inſtance and requeſt; and alſo for divers materials and other neceſſary things uſed and applied in and about that buſineſs, and found and provided by the ſaid plaintiff for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly.)

For ſailor's wages, againſt the captain.

FOR the wages of ſaid plaintiff before that time due and payable from ſaid defendant to the ſaid plaintiff, for his ſervice before that time done and performed, as a ſailor in, of, and belonging on board of a certain ſhip or veſſel called the Nancy, whereof the ſaid defendant was commander, and on the retainer of ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly; Counts for work and labour generally; money laid out, &c.; and common concluſion.)

Work and labour as an apothecary, and medicines, &c. found.

FOR that whereas said defendant heretofore, to wit, on, &c. at, &c. was indebted to said plaintiff (the said plaintiff then, and for divers years, being an apothecary, and the profession of an apothecary from the time aforesaid using and exercising) in pounds of lawful, &c. for work and labour, care and diligence, of said plaintiff, by him said plaintiff, at the special instance and request of said defendant, before that time done, performed, and bestowed in and about the healing and curing of said defendant, and divers persons belonging to said defendant's family, of divers diseases, maladies, and disorders, under which they then laboured and languished, and for divers medicines, medicinal potions, plasters, and other necessary things before that time found and provided by said plaintiff for the said defendant and divers of his family, and at his like special instance and request; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for goods sold and delivered; money laid out, &c.; and common conclusion.)

[illegible] and labour as a schoolmaster.

FOR the work and labour, care and diligence, of said plaintiff, as a schoolmaster, by him said plaintiff before that time done, performed, and bestowed in and about the teaching and instructing one, &c. the infant son (or daughter) of said defendant, in reading, writing, good manners, and other necessary accomplishments and qualifications, for a long time, to wit, for the space of three years then elapsed, at the special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly; Counts for meat, drink, washing, lodging, books, and other necessary things found and provided by said plaintiff for said, &c. the infant son of said defendant, and at his special instance and request, &c.; *quantum meruit* accordingly; goods sold, &c. to defendant, money laid out, &c.; and common conclusion.)

[illegible] and labour as a schoolmistress.

FOR the work and labour, skill and knowledge, of said plaintiff, as a schoolmistress, before that time done, performed, and bestowed in and about the teaching, &c. of, &c. the daughters of said defendant, in reading, writing, arithmetic, &c. for a long time, to wit, for the space of three years then elapsed, at the special instance and request of said defendant; and being so indebted, &c. (*Quantum meruit* accordingly.)

[illegible] and labour as an undertaker, by [illegible] and his servants.

FOR the work and labour, &c. of said plaintiff, as an undertaker of funerals, before that time done, performed, and bestowed by said plaintiff and his servants, and with his horses, hearses, coaches, and other carriages, in and about the funeral of one S. M. at the special instance and request of said defendant, and on his retainer, and for divers materials and other necessary things be[illegible] provided, used and employed in and about the

furniſhing and conducting the funeral aforeſaid, at the like ſpecial inſtance and requeſt of ſaid defendant; and being ſo indebted, &c. (*Quantum meruit* accordingly; Counts for the hire of goods and chattels, &c.; money laid out, and goods ſold, &c.; common concluſion.)

For drawing plans, ſurveying houſes, &c. the ſole of a ſurveyor.

FOR the work and labour, care and diligence, of ſaid plaintiff, by him before that time done and performed in and about the drawing of divers plans and elevations of dwelling-houſes and buildings of ſaid defendant, and at his ſpecial inſtance, &c. and alſo in and about the ſurveying and ſuperintending, and taking care of a certain building, to wit, a dwelling-houſe of him ſaid defendant, during the erection thereof, to wit, at, &c. aforeſaid, on the retainer of ſaid defendant, and at his like ſpecial inſtance and requeſt, and for his the ſaid plaintiff's attendance and care in and about the ſame, by him done, performed, and employed for ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, and on his retainer, had before that time done, performed, and beſtowed other his work, &c. in and about the drawings of divers other plans and elevations of dwelling-houſes and other buildings for the ſaid defendant, and alſo in and about the ſurveying and ſuperintending, and taking care of a certain other building, to wit, a certain other dwelling-houſe of him ſaid defendant, during the erection thereof, to wit, at, &c. aforeſaid, on the retainer of ſaid defendant, and at the like ſpecial inſtance and requeſt of ſaid defendant had done, performed, and employed *his the ſaid plaintiff's attendance and care* for the ſaid defendant in and about the ſame, he the ſaid defendant undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay him ſo much as, &c.: And ſaid plaintiff avers, that, &c. And whereas, &c. (Counts for work and labour generally.)

Quantum meruit

Work and labour in doing journies, and attendance thereon.

FOR the work and labour of ſaid plaintiff, by ſaid plaintiff before that time done, &c. in making divers journies, and giving his attendance in and about the buſineſs of ſaid defendant, and for ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time done, &c. other his work and labour, &c. in the performing divers other journies, and giving other his attendance in and about the buſineſs of ſaid defendant, and for ſaid defendant, he ſaid defendant undertook, and then and there faithfully promiſed, &c. to pay him ſo much, &c.: And ſaid plaintiff avers, that, &c.

Quantum meruit

Work and labour as a physician or doctor of physic.

THAT WHEREAS said defendant, on, &c. at, &c. was indebted to the said plaintiff, he said plaintiff then, and for divers years then last past, being a doctor of physic, for all the time aforesaid using and exercising, in pounds of lawful, &c. for the work, &c. of said plaintiff before that time done, &c. in about the visiting of and prescribing physic to and for said defendant, labouring and languishing under divers diseases, maladies, and disorders, at the special instance and request of said defendant; *Quantum meruit.* and being so indebted, &c. in consideration that said plaintiff (so being a doctor of physic as aforesaid, and using the said profession as aforesaid), at the like special instance and request of said defendant, had before that time done, performed, &c. other his work, &c. in and about the visiting and prescribing other physic to and for said defendant, labouring and languishing under divers other diseases, &c. he said defendant undertook, &c. to pay him so much as, &c.: And said plaintiff avers, that, &c.

It is determined, that a physician cannot maintain an action for his fees.

Work and labour as a midwife.

FOR the work, &c. of said plaintiff as a midwife (she the said plaintiff then, and long before, and continually from thence afterwards, using and exercising the art or business of a midwife) before that time done, &c. by said plaintiff to and for one the wife of said defendant, at the special instance and request of said defendant; *Quantum meruit.* and being so indebted, &c. in consideration that said plaintiff (so being such midwife, and exercising such art and business as aforesaid), at the like special instance and request of said defendant, had before that time done, &c. her work, &c. as a midwife, to and for said the wife of the said defendant, he said defendant undertook, &c. to pay him so much as, &c.: And said plaintiff avers, that, &c. (Counts for work and labour generally; money laid out; and common conclusion.)

NOTE, If a midwife is married, the action must be brought by the husband *alone*, for he by law is entitled to the earnings of the wife. The declaration in such case is, that defendant is indebted to plaintiff for the work, &c. of M the wife of said plaintiff, as a midwife, &c. with a *quantum meruit*, adding Counts for work and labour generally, as follows: "for the work, &c. of said plaintiff done by him and his servants, &c;" for in law, the wife is the servant of the husband; and so in other similar cases; though the two last Counts would be sufficient.

FOR the wages or salary of said plaintiff before that time due and owing to said plaintiff from said defendant, for the service of said plaintiff, before then done, performed, and bestowed by said plaintiff, as the servant of said defendant, for a long time, to wit, for the space of then elapsed, on his retainer, and at his special instance and request; and being so indebted, &c. in consideration that said plaintiff, at the like special instance and re-

Quantum meruit.

queſt of ſaid defendant, had before that time done, performed, and beſtowed other his ſervice, as the ſervant of ſaid defendant, and on his retainer, for a long time, to wit, for the ſpace of, &c. then elapſed, the ſaid defendant undertook, and then and there promiſed, &c. to pay him ſo much, &c.: And ſaid plaintiff avers, that, &c. (Counts for work and labour generally; money laid out, &c.; and common concluſion.)

On an attorney's bill, for drawing deeds, &c. making journies, attendances, &c. &c.

FOR the work, &c. of ſaid plaintiff before that time done, &c. by ſaid plaintiff, as the attorney or ſolicitor of ſaid defendant, in and about the drawing, writing, and engroſſing of divers deeds and inſtruments, and making of divers journies, and giving his attendance in and about the buſineſs of ſaid defendant, and for ſaid defendant, and at his ſpecial inſtance and requeſt, and upon his retainer, and for money by the ſaid plaintiff before that time laid out, expended, and paid for ſaid defendant in that particular, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, as the attorney or ſolicitor of ſaid defendant, had before that time done, performed, and beſtowed other his work and labour, care and diligence, in and about the drawing, writing, and engroſſing of divers other writings, deeds, or inſtruments, and the going, making, and performing divers other journies, and giving other his attendance in and about other the buſineſs of ſaid defendant, and for the ſaid defendant, and at his like ſpecial inſtance and requeſt, and upon his like retainer, he ſaid defendant undertook to pay him ſo much as, &c.: And ſaid plaintiff avers, &c.

Quantum merui

On an attorney's bill, for profecuting and defending ſuits, drawing deeds, &c. attendances, journies, &c. &c.

FOR the work, &c. of ſaid plaintiff by him the ſaid plaintiff, as the attorney and ſolicitor of ſaid defendant, and upon his retainer, before that time done, &c. for ſaid defendant, in and about the proſecuting and defending divers ſuits at law and in equity in the ſaid court here, and in other his majeſty's courts of record at Weſtminſter, at his ſpecial inſtance and requeſt, and alſo in drawing, writing, and engroſſing divers writings, deeds, and inſtruments, and making divers journies, and giving his attendance in and about other the buſineſs of ſaid defendant, and for ſaid defendant, and at his like ſpecial inſtance and requeſt, and upon his like retainer, and for money by ſaid plaintiff before that time laid out, expended, and paid for ſaid defendant in that particular, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, as the attorney or ſolicitor of ſaid defendant, at the like ſpecial inſtance and requeſt of ſaid defendant, and on his like retainer, had before that time done, &c. other his work, &c. for ſaid defendant in and about the proſecuting and defending divers other ſuits at law and in equity in ſaid court here, and in other his majeſty's courts of record at Weſtminſter, and in drawing, &c. divers other writings, &c.

Quantum meruit

making divers other journies, and giving other his attendance in and about other the buſineſs of ſaid defendant, and at his like ſpecial inſtance and requeſt, and upon his like retainer, he ſaid defendant undertook, &c. to pay him ſo much as, &c.: And ſaid plaintiff avers, that, &c.

For freight of FOR the freight of divers goods, wares, and merchandizes of the ſaid defendant, by ſaid plaintiff before that time tranſported, carried, and conveyed from, &c. to, &c. in certain ſhips or veſſels of him ſaid plaintiff, for the ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid defendant, at the like ſpecial inſtance, &c. of ſaid defendant, had before that time tranſported, carried, and conveyed divers other goods, &c. of ſaid defendant, and for ſaid defendant, in certain other ſhips and veſſels of him ſaid plaintiff, from, &c. to, &c. he the ſaid defendant undertook, &c. to pay ſo much as, &c.: And ſaid plaintiff avers, that, &c.

Quantum meruit.

For neceſſaries found for defendant's child, or hired perſon, at defendant's requeſt. FOR the meat, drink, waſhing, and lodging, and other neceſſaries by ſaid plaintiff before that time found and provided for one (*the infant ſon or daughter of ſaid defendant*), at the like ſpecial inſtance and requeſt of ſaid defendant; and being ſo indebted, &c. (*Quantum meruit* accordingly.)

For the agiſtment of cattle. FOR the agiſting, feeding, keeping, and depaſturing of divers cattle of ſaid defendant, by the ſaid plaintiff before that time agiſted, fed, kept, and depaſtured in the paſtures of ſaid plaintiff, for the ſaid defendant, and at his like ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly.)

For a ſtone-horſe covering a mare. FOR the uſe of certain ſtone-horſes of ſaid plaintiff, by ſaid defendant before that time had and uſed for, in, and about the covering of divers mares of the ſaid defendant, for ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time ſuffered and permitted divers other ſtone-horſes of him ſaid plaintiff to cover divers other mares of ſaid defendant, and that ſaid laſt-mentioned ſtone-horſes of ſaid plaintiff had accordingly covered ſaid laſt-mentioned mares of ſaid defendant, he ſaid defendant undertook, &c. to pay him ſo much, &c.: And ſaid plaintiff avers, that, &c. (Add Counts for work and labour of the plaintiff by himſelf and his horſes, &c.; money laid out, &c.; and common concluſion.)

Quantum meruit.

FOR

THIRD PERSON, PEW IN A CHURCH.

FOR divers goods, wares, and merchandizes, by ſaid plaintiff before that time ſold to ſaid defendant, and according to the terms of ſuch ſale delivered to one at the ſpecial inſtance and requeſt of ſaid defendant; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance, &c. of ſaid defendant, had before that time ſold to the ſaid defendant divers other goods, wares, and merchandizes, and according to the terms of ſuch ſale had delivered ſame to one he ſaid defendant undertook, &c. to pay him ſo much, &c.: And ſaid plaintiff avers, that, &c.

For goods, &c. ſold to defendant, and delivered to a *third perſon* at defendant's requeſt.

Quantum meruit.

IN conſideration that ſaid plaintiff, at the ſpecial inſtance, &c. of ſaid defendant, *would ſell and deliver* to one, &c divers goods, &c. to wit, &c. of a large value, to wit, &c. he ſaid defendant undertook, &c. to pay him ſaid plaintiff the ſaid ſum of &c. when, &c.: And ſaid plaintiff avers, that he, confiding in ſaid promiſe, &c. of ſaid defendant, did afterwards, to wit, on, &c. at, &c. at the ſpecial inſtance, &c. of ſaid defendant, ſell and deliver to ſaid, &c. the ſaid goods, &c. to wit, &c.; whereof ſaid defendant afterwards, to wit, on, &c. at, &c. aforeſaid, had notice; by means whereof, and according to the tenor and effect of ſaid promiſe, &c. ſaid defendant then and there became liable to pay, and ought to have paid, to ſaid plaintiff ſaid ſum of, &c. to wit, at, &c. aforeſaid. (*Quantum meruit* of the ſame kind, making the promiſe to pay ſo much as plaintiff deſerved to have; and aver, that he deſerved to have pounds as common.)

A promiſe to pay a debt is not within the ſtatute of Frauds, but *it ſee Lun ſaid* would be ſo. Heldny *v.* Allen, MSS. Mich. 1783.

FOR the uſe and occupation of a certain ſeat of the ſaid plaintiff in a certain pew in the pariſh-church of, &c. by the ſaid defendant before that time had, uſed, occupied, poſſeſſed, and enjoyed by himſelf and divers others of his family, every Sunday and holiday for a long time, to wit, for the ſpace of, &c. then elapſed, for the hearing and attending therein of divine ſervice performed in the ſaid church, by permiſſion of the ſaid plaintiff, and at the ſpecial inſtance and requeſt of the ſaid defendant; and being ſo indebted, &c. in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid defendant, had before that time permitted and ſuffered the ſaid defendant and divers others of his family to ſit in and uſe a certain ſeat of the ſaid plaintiff in a certain pew in the pariſh church of aforeſaid, to hear and attend divine ſervice there; and that the ſaid defendant and divers others of his family had, according to that permiſſion, ſat in and uſed the ſame for a long time, to wit, for the ſpace of, &c then elapſed, he the ſaid defendant undertook, to pay him ſo much, &c.: And the ſaid plaintiff avers, that, &c.

For the uſe of pew.

FOR

Indebitatus aſſumpſit for a partnerſhip debt, at the ſuit of a ſurviving partner.

FOR that whereas the ſaid defendant heretofore, in the lifetime of one A. B. deceaſed, and whom the ſaid plaintiff hath ſurvived, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff and A. B. in pounds of lawful, &c. for divers goods, wares, &c. before that time ſold and delivered by the ſaid plaintiff to the ſaid defendant, at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid defendant, in conſideration thereof, afterwards, in the lifetime of the ſaid A. B. to wit, on, &c. at, &c. aforeſaid, undertook, &c. to pay them the ſaid ſum of [illegible] ſaid defendant ſhould be thereto afterwards requeſted; and whereas afterwards, in the lifetime of the ſaid A. B. to wit, on, &c. at, &c. aforeſaid, in conſideration that the ſaid plaintiff and A. B. at the like ſpecial inſtance, &c. of the ſaid defendant, had before that time ſold and delivered to the ſaid defendant divers other goods, &c. he the ſaid defendant undertook, &c. to pay him ſo much, &c.: And the ſaid plaintiff avers, that he the ſaid plaintiff and the ſaid A. B. in the lifetime of the ſaid A. B. therefore reaſonably deſerved, &c.; whereof the ſaid defendant afterwards, in the lifetime of the ſaid A. B. to wit, on, &c. at, &c. aforeſaid, had notice: Yet the ſaid defendant, not regarding, &c. but contriving, &c. to deceive and defraud the ſaid plaintiff and A. B. in the lifetime of the ſaid A. B. and the ſaid defendant ſince his deceaſe, hath not as yet paid the ſaid ſeveral ſums of money, or either of them, or any part thereof, either to the ſaid plaintiff and A. B. in the lifetime of the ſaid A. B. or to the ſaid plaintiff ſince his death, or to either of them (although to pay the ſame the ſaid defendant was requeſted by the ſaid plaintiff and A. B. in the lifetime of the ſaid A. B. to wit, on, &c. aforeſaid, and by the ſaid plaintiff ſince the death of the ſaid A. B. to wit, on, &c. and often afterwards, to wit, at, &c. aforeſaid); but he ſo to do hath hitherto wholly refuſed, and ſtill refuſes, to pay the ſame, or any part thereof, to the ſaid plaintiff, to wit, at, &c. aforeſaid, to the damage of the ſaid plaintiff, as ſuch ſurviving partner as aforeſaid of A. B.; for which he brings his ſuit.

Quantum meruit.

FOR the hire of horſes, mares, and geldings of the ſaid plaintiff, by him the ſaid plaintiff before that time let to hire to the ſaid defendant, at his ſpecial inſtance and requeſt, and by him the ſaid defendant, according to that letting to hire, had and uſed; and being ſo indebted, &c. in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid defendant, had before that time let to hire to the ſaid defendant divers other horſes, &c. of the ſaid plaintiff, and that the ſaid defendant had, according to that letting to hire, had and uſed the ſame, he the ſaid defendant undertook, &c. to pay him ſo much money as, &c.: And the ſaid plaintiff avers, that, &c.

FOR

FOR the uſe and occupation of a certain meſſuage or tenement, with the appurtenances, ſituate at, &c. (according as premiſes are ſituated), by him the ſaid defendant, at his requeſt, and by the permiſſion of the ſaid plaintiff, for a long time, to wit, for the ſpace of then elapſed, had held, uſed, occupied, and poſſeſſed; and being ſo indebted, &c. in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid defendant, had before that time permitted the ſaid defendant to have, hold, uſe, occupy, poſſeſs, and enjoy a certain other meſſuage, or tenement, with the appurtenances, ſituate at, &c. aforeſaid, and that ſaid defendant, according to that permiſſion, had held, uſed, occupied, poſſeſſed, and enjoyed the ſame for a long time, to wit, for the ſpace of, &c. then elapſed, he the ſaid defendant undertook, &c. to pay him ſo much as, &c.: And the ſaid plaintiff avers, that, &c.

For the uſe and occupation of a meſſuage, lands, lodgings, &c.

Quantum meruit

If there be a ſpecial agreement, and you declare upon it, and alſo a *quantum meruit*, if you do not recover on the agreement, you cannot on the *quantum meruit*: but if you declare on the *quantum meruit* you may give the agreement in evidence, if performed. Bull. Ni. Pri. 139.

IF for the uſe and occupation of land and meſſuage, ſay, "For the uſe and occupation of a certain meſſuage, or, &c. and " acres of land, with the appurtenances, lying and being in "the pariſh of, &c." N.B. You muſt deſcribe the nature of the land, one hundred acres of arable land, one hundred acres of paſture, and one hundred acres of meadow land, &c.

For land, &c.

IF for ready-furniſhed lodgings, ſay, "For the uſe, &c. of "certain ready-furniſhed lodgings, with the appurtenances, being "part and parcel of a certain meſſuage or dwelling-houſe, ſituate "at, &c."

For ready-furniſhed lodgings.

IF for unfurniſhed lodgings, ſay, "For the uſe, &c. of cer- "tain rooms, with the appurtenances, being in and part and parcel "of a certain meſſuage, &c. ſituate, &c."

For unfurniſhed lodgings.

NOTE. *Nil habuit in tenementis* is not a good plea to an action for uſe and occupation: but in debt for rent upon a leaſe *not indented*, this plea may be pleaded, becauſe an intereſt paſſes by a leaſe; nor is there any occaſion for the plaintiff to ſhew any title upon theſe contracts. 1. Wilſ. 324. Bull. Ni. Pri. 139.

FOR meat, drink, waſhing, lodging, and other neceſſaries, [illegible] by the ſaid plaintiff before that time found and provided for the ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. (*Quantum meruit* accordingly.)

Declaration for meat, drink, washing, and lodging, found for a third person, at defendant's request.

FOR that whereas the said H. P. on, &c. at, &c. was indebted to the said Thomas in the sum of pounds of lawful money of Great Britain, for meat, drink, washing, and lodging, and other necessary things, before that time found and provided for one A. B. at the special instance and request of the said H. P.; and being so indebted he the said H. P. afterwards, to wit, on, &c. at, &c. in consideration thereof, undertook, and then and there faithfully promised the said Thomas, to pay him the said sum of money, when he the said H. P. should be thereto afterwards requested. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas had before that time found and provided other meat, drink, washing, and lodging, and other necessary things, for the said A. B. and at the like special instance and request of the said H. P. he the said H. P. undertook, and then and there faithfully promised the said Thomas, to pay him so much money as he therefore reasonably deserved to have, when he the said H. P. should be thereto afterwards requested: And the said Thomas in fact says that he reasonably deserved to have of the said H. P. for the said last-mentioned meat, drink, washing, and lodging, and other necessary things, the sum of pounds of like lawful money, to wit, at, &c.; whereof the said H. P. afterwards, to wit, on, &c. at, &c. had notice. (Money paid, &c.; and common conclusion to the whole.)

Declaration for the maintenance and education of the plaintiff's daughters.

FOR that whereas the said J. P. on, &c. at, &c. was indebted to the said E. L. in fifty pounds of lawful money of Great Britain, for the board, maintenance, and education of one A. B. and C. D. daughters of the said J. P. for a long time before then elapsed, found, furnished, supplied, and provided by the said E. L. at the special instance and request of the said J. P., and being so indebted, &c.: And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said E. L. had before that time, at the like special instance and request of the said J. P. found, furnished, supplied, and provided other board, maintenance, and education for the said A. B. and C. D. the aforesaid daughters of the said J. P. for a certain other long time before then elapsed, he the said John undertook, and then and there faithfully promised the said E. L. to pay her so much money as she therefore reasonably deserved to have, when he the said John should be thereto afterwards requested: And the said E. L. avers, that she therefore reasonably deserved to have of the said John other fifty pounds of like lawful money, to wit, at, &c.; whereof the said John afterwards, to wit, on, &c. at, &c. there had notice. (Money paid; and common conclusion to the whole.)

Declaration by plaintiffs, who were surgeons, against executors, &c.

MIDDLESEX, to wit. Charles Hales and Charles Swift complain of J. B. and J. C. executors of the last will and testament

ment of J. B. deceaſed, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, of a plea of treſpaſs on the caſe: for that whereas the ſaid J. B. in his lifetime, to wit, on, &c. at, &c. was indebted to the ſaid C. H. and C. S. (they the ſaid C. H. and C. S. then, and for divers years then laſt paſt, being ſurgeons, and the buſineſs of a ſurgeon for all the time aforeſaid uſing and exerciſing) in two hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the ſaid C. H. and C. S. by them in the lifetime of the ſaid J. B. and at his ſpecial inſtance and requeſt before that time done, performed, and beſtowed, as ſurgeons, in and about the healing and curing of the ſaid J. B. of divers diſeaſes and maladies under which he had laboured and languiſhed, and for divers medicines, medicinal potions, plaiſters, and other neceſſary things, uſed and applied on thoſe occaſions, before that time found, provided, and applied by them the ſaid C. H. and C. S. at the like ſpecial inſtance and requeſt of the ſaid J. B. in his lifetime; and being ſo indebted, he the ſaid J. B. in his lifetime, in conſideration thereof, afterwards, to wit, on, &c. undertook, and then and there faithfully promiſed the ſaid C. H. and C. S. to pay them the ſaid ſum of money when he the ſaid J. B. ſhould be thereto afterwards requeſted And whereas afterwards, to wit, on, &c. in conſideration that the ſaid C. H. and C. S. (then, and for divers years then laſt paſt, being ſurgeons, and the buſineſs of a ſurgeon for all the time aforeſaid uſing and exerciſing), at the like ſpecial inſtance and requeſt of the ſaid J. B. in his lifetime, had before that time done, performed, and beſtowed other their work and labour, care and diligence, as ſurgeons, in and about the healing and curing of the ſaid J. B. in his lifetime of divers other diſeaſes and maladies under which he had laboured and languiſhed, and had, at the like ſpecial inſtance and requeſt of the ſaid J. B. in his lifetime, found, provided, and applied divers other medicines, medicinal potions, plaiſters, and other neceſſary things uſed and applied on thoſe occaſions, he the ſaid J. B. in his lifetime undertook, and then and there faithfully promiſed the ſaid C. H. and C. S. to pay them ſo much money as they therefore reaſonably deſerved to have, when he the ſaid J. B. ſhould be thereto afterwards requeſted: And the ſaid C. H. and C. S. aver, that they therefore reaſonably deſerved to have of the ſaid J. B. in his lifetime for the ſame other two hundred pounds of like lawful money, to wit, at Weſtminſter aforeſaid; whereof he the ſaid Joſeph in his lifetime, afterwards, to wit, on the ſame day and year aforeſaid, there had notice. And whereas the ſaid Joſeph in his lifetime, afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, was indebted to the ſaid C. H. and C. S. in other two hundred pounds of like lawful money, for other the work and labour, care and diligence, of the ſaid C. H. and C. S. by them before that time done, performed, and beſtowed, as ſurgeons, in and about the healing and curing of the ſaid Joſeph in his lifetime of divers other diſeaſes and maladies under which he

had laboured and languiſhed, and at his ſpecial inſtance and requeſt, and for divers medicines, medicinal potions, plaiſters, and other things, uſed and applied on thoſe occaſions, before that time found, provided, and applied by them the ſaid C. H. and C. S. at the like inſtance and requeſt of the ſaid Joſeph in his lifetime; and being ſo indebted, he the ſaid Joſeph in his lifetime, in conſideration thereof, afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, undertook, and faithfully promiſed the ſaid C. H. and C. S. to pay them the ſaid laſt-mentioned ſum of money, when he ſhould be thereto afterwards requeſted. And whereas afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in conſideration that the ſaid C. H. and C. S. at the like ſpecial inſtance and requeſt of the ſaid Joſeph in his lifetime, had before that time done and performed other their work and labour, care and diligence, as ſurgeons, in and about the healing and curing of the ſaid Joſeph of divers other diſeaſes and maladies under which he had laboured and languiſhed, and had, at the like inſtance and requeſt of the ſaid Joſeph, before that time found, provided, and applied, divers other medicines, medicinal potions, and plaiſters, and other neceſſary things in that particular, he the ſaid Joſeph in his lifetime undertook, &c. (*Quantum meruit.* There were, beſides the foregoing Counts, two others in this declaration for work and labour, with materials found, generally; money Counts; and concluſion.)

Declaration by a curate againſt his rector, for preaching and officiating as his curate.

MIDDLESEX, to wit. A. complains of B. being, &c.: for that whereas the ſaid B. on, &c. at, &c. in, &c. was indebted to the ſaid A. in the ſum of fifty pounds of lawful money of Great Britain, for the work and labour of the ſaid A. before that time done and performed for the ſaid B. in preaching and celebrating divine ſervice at the parochial church of C. at the ſpecial inſtance and requeſt of the ſaid B.; and being ſo indebted, he the ſaid B. in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. And whereas, &c. (*Quantum meruit.*)

For neceſſaries found and provided.

AND whereas the ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff in ten pounds of lawful money of Great Britain, for meat, drink, waſhing, lodging, and other neceſſaries, by the ſaid plaintiff before that time found and provided for the ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. And whereas, &c. (*Quantum meruit* accordingly; money laid out, &c.; and common concluſion.

Quantum meruit.

Declaration for ſurgeon's bill.

AND whereas the ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff (*the ſaid plaintiff then, and*

and for divers years then laſt paſt, being a ſurgeon, and the buſineſs of a ſurgeon for all the time aforeſaid uſing and exerciſing) in twenty pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant, before that time done, performed, and beſtowed, as a ſurgeon, in and about the healing and curing of the ſaid defendant of divers diſeaſes and maladies under which he had laboured and languiſhed, and for divers medicines, medicinal potions, plaiſters, and other neceſſary things, before that time provided and applied by the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant in that behalf; and being ſo indebted, &c. And whereas afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid plaintiff *(being then a ſurgeon as aforeſaid, and uſing the ſaid art)*, at the ſpecial inſtance and requeſt of the ſaid defendant, had before that time done, performed, and beſtowed, other his work and labour, care and diligence, as a ſurgeon, in and about the healing and curing of the ſaid defendant of divers other diſeaſes and maladies under which he had laboured and languiſhed, and had in that behalf, and at the like ſpecial inſtance and requeſt of the ſaid defendant, provided and applied divers other medicines, &c. he the ſaid defendant undertook, &c. (Add two more Counts ſame as the former, only omitting what is in Italic; add two more Counts for work and labour as an apothecary; add two more Counts for work, &c. and materials found; money laid out; ditto had and received; and common concluſion. *Quantum meruit.*

N. B. The reaſon of the foregoing Counts, conſiſting of theſe four Counts, two for work, &c. as a ſurgeon, and two for work &c. as an apothecary, is, becauſe we often meet with people practiſing as doctors or ſurgeons who are really not ſo, as licentiates and graduates practiſe as doctors though they are not ſo, and apothecaries often practiſe as ſurgeons; ſo do many other perſons under licences from biſhops; therefore you cannot depend on the two firſt Counts, for there plaintiff muſt prove himſelf an actual doctor of phyſic or ſurgeon, as he is ſtiled in the declaration, and therefore the two laſt Counts are added, for fear the two firſt Counts ſhould not be true, or at leaſt muſt be proved of a perſon who is neither doctor, ſurgeon, or perſon authoriſed to practiſe as ſuch. However, he who performs a cure is intitled by law to his *quantum meruit*, though he may lay himſelf under the penalty of practiſing without licenſe; and in caſe of a cure done by ſuch perſon, we only declare on a general *indebitatus aſſumpſit* for work, &c. done by plaintiff in and about the curing, &c without ſhewing it was done by plaintiff, being a doctor or ſurgeon, or as a ſurgeon or apothecary.

AND whereas the ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff in ten pounds of lawful money of Great Britain, for the mooring and faſtening of a certain ſhip or veſſel, called, &c. to a certain chain of the ſaid plaintiff, lying and being in the river Thames, in the ſaid county of Middleſex, before then, and for a long time, to wit, for the ſpace of three years, moored and faſtened at D. by the ſaid defendant to the ſaid chain of the ſaid plaintiff, and by his permiſſion and ſufferance, at the ſpecial inſtance and requeſt of the ſaid defendant; and

For the mooring of ſhips.

Quantum meruit. and being ſo indebted, &c. And whereas afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid plaintiff had before, at the like ſpecial inſtance and requeſt of the ſaid defendant, permitted and ſuffered the ſaid defendant to moor and faſten a certain other ſhip or veſſel, called, &c. to a certain other chain of the ſaid plaintiff, there being in the river Thames in the county aforeſaid; and that the ſaid defendant, by virtue of ſuch permiſſion and ſufferance, had before then moored and faſtened the ſaid ſhip or veſſel to the ſaid chain there for a long time, to wit, for the ſpace of, &c. before then elapſed, he the ſaid defendant undertook, &c.: And the ſaid plaintiff avers, &c.

Aſſumpſit againſt one of two perſons, where the other was outlawed, for goods ſold, &c. Vide Litl. Ent. 44.

FOR that whereas the ſaid defendant, together with one A. B. late of, &c. (partner and joint dealer with the ſaid defendant, which ſaid A. B. was and now is in due manner outlawed in the court of our lord the king, before his juſtices at Weſtminſter), on, &c. to wit, at, &c. was indebted to the ſaid plaintiff in one hundred pounds of lawful money of Great Britain, for divers goods, &c. by the ſaid plaintiff before that time ſold and delivered to the ſaid defendant and A. B. who, &c. at their ſpecial inſtance and requeſt; and being ſo indebted, they the ſaid defendant and A. B. who, &c. in conſideration, &c. And whereas, &c. (a *quantum meruit* accordingly): Yet the ſaid defendant and A. B. who, &c. before (and the ſaid defendant ſince) the ſaid outlawry was had, not regarding, &c. but contriving, &c. have not, nor hath either of them, paid, &c. (although ſo to do the ſaid defendant and A. B. who, &c. before the ſaid outlawry was had, were, and each of them was, oftentimes requeſted, and the ſaid defendant, ſince the ſaid outlawry was had, hath been requeſted by the ſaid plaintiff, afterwards, to wit, on, &c. and often afterwards, to wit, at, &c.); but they to do this have, and each of them hath, hitherto wholly refuſed, and the ſaid defendant ſtill refuſes ſo to do, to the damage, &c.

Conclusion.

Indebitatus aſſumpſit for tonnage on a Canal.

AND whereas the ſaid defendant afterwards, to wit, on, &c. at, &c. was indebted to the ſaid plaintiff in one hundred pounds of lawful money of Great Britain, for the tonnage of divers goods, wares, and merchandizes, by him the ſaid plaintiff before that time navigated, carried, and conveyed upon divers parts of a certain navigable cut or canal, navigable and paſſable from the river A. to the river B. in certain barges and other veſſels, for the ſaid defendant, and at his ſpecial inſtance and requeſt; and being ſo indebted, &c. &c. And whereas afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid plaintiff had before that time, at the like ſpecial inſtance and requeſt of him the ſaid defendant, navigated, carried, and conveyed divers other goods, wares, and merchandizes of him the ſaid defendant upon divers parts of the ſaid cut or canal, in certain other boats, barges, and other veſſels, for him the ſaid defendant, he the ſaid defendant undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay him the

Quantum meruit.

ſaid

ſaid plaintiff ſo much money as he therefore reaſonably deſerved to have for the tonnage thereof, when he the ſaid plaintiff ſhould be thereto afterwards requeſted: And the ſaid plaintiff avers, &c. &c.

AND whereas the ſaid R. H. as ſuch executrix as aforeſaid, after the death of the ſaid J. R. and in the lifetime of the ſaid A. W. to wit, on, &c. at, &c. accounted with the ſaid A. W. of and concerning divers ſums of money due and owing from the ſaid J. R. in his lifetime, and at the time of his death, to the ſaid A. W. then in arrear and unpaid; and upon that accounting it was found that the ſaid J. R. at the time of his death, was in arrear and indebted to the ſaid A. W. in a large ſum of money, to wit, the ſum of fifty-four pounds of like lawful money, and that a part of the ſaid ſum of fifty-four pounds, to wit, the ſum of twenty-four pounds, then, to wit, on, &c. and at the time of the ſaid R. H.'s accounting with the ſaid A. W. as aforeſaid, remained and was due and unpaid to him the ſaid A. W. either by the ſaid J. R. in his lifetime, or by the ſaid R. H. executrix as aforeſaid, after his death; whereupon ſhe the ſaid R. H. as ſuch executrix as aforeſaid, in conſideration of the premiſes, then and there, to wit, on, &c. at, &c. undertook, and faithfully promiſed the ſaid A. W. to pay him the ſaid ſum of twenty-four pounds, when ſhe the ſaid R. H. as ſuch executrix as aforeſaid ſhould be thereto afterwards requeſted: Yet the ſaid R. H. not regarding her ſaid promiſe and undertaking, but contriving and fraudulently intending to deceive and defraud the ſaid A. W. in his lifetime and the ſaid plaintiffs, executors as aforeſaid, ſince death, in this behalf, hath not as yet paid the ſaid ſum of twenty-four pounds, or any part thereof, either to the ſaid A. W. in his lifetime, or to the ſaid plaintiffs, executors as aforeſaid, or to any or either of them, ſince his death (although to do this ſhe the ſaid R. H. as ſuch executrix as aforeſaid, was requeſted by the ſaid A. W. in his lifetime, to wit, on, &c. and often afterwards, to wit, at, &c.; but ſhe to pay the ſame to any or either of them hath always wholly refuſed, and ſhe doth ſtill refuſe to pay the ſame, or any part thereof, to the ſaid plaintiffs, as executors as aforeſaid, or to any or either of them, to the ſaid plaintiffs, as ſuch executors as aforeſaid, their damage of fifty pounds; and therefore they bring ſuit. (Profert of letters teſtamentary.)

An account ſtated between the executrix of the debtor with the plaintiff's teſtator.

Concluſion to a declaration, exagainſt executor.

V. LAWES.

————, to wit. S. D. and T. R. aſſignees of the eſtates and effects of A. B. an inſolvent debtor, according to the form of the ſtatutes in ſuch caſe lately made and provided, complains of E. T. being, &c.: for that whereas the ſaid E. T. on, &c. at, &c. was indebted to the ſaid A. B. before his diſcharge from priſon hereafter mentioned, in twenty pounds of lawful money of Great

Declaration by the aſſignees of an inſolvent debtor, for money had and received, and for money lent.

Britain, for ſo much money before that time received by the ſaid E. T. to the uſe of the ſaid A. B.; and being ſo indebted, he the ſaid E. T. in conſideration thereof, afterwards, and before the diſcharge of the ſaid A. B. from priſon hereafter mentioned, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid A. B. to pay the ſaid ſum of twenty pounds whenever he the ſaid E. T. ſhould be thereto afterwards requeſted. And whereas, &c. (this Count for money lent): And the ſaid plaintiffs aver, that after the making of the ſaid ſeveral promiſes and undertakings, and before and at the time of the making of a certain act of parliament of our lord the king, holden at Weſtminſter in the county of Middleſex, in the twenty-firſt year of his majeſty's reign, entitled, "An Act for the Relief of Inſolvent Debtors;" and on the firſt day of January 1747, in the ſaid act mentioned, the ſaid A. B. was, and continually from the day and year laſt mentioned until his diſcharge from priſon hereafter mentioned continued a priſoner for debt in his majeſty's priſon for the ſaid county of G. commonly called the county gaol of that county: And the ſaid plaintiffs further ſay, that he the ſaid A. B. afterwards, and before the exhibiting of this bill, to wit, on, &c. at, &c. was duly diſcharged from that impriſonment by virtue of the ſaid act, and afterwards, and before the exhibiting of this bill, at, &c. the ſaid plaintiffs were duly choſen and appointed aſſignees of the ſaid eſtate and effects of the ſaid A. B. according to the form of the ſame act; whereof the ſaid defendant then and there had notice: Yet, &c. (conclude like a declaration by aſſignees of a bankrupt.

Declaration againſt defendant, for money due to the plaintiff for mahogany, part of which he had delivered to the purchaſor, who died, and the reſidue he delivered to the widow, at the requeſt of defendant, who undertook to ſee plaintiff paid: plaintiff had entered a caveat to prevent proving the will of the deceaſed.

to wit. J. complains of N. P. being, &c.: for that whereas the ſaid plaintiff heretofore, that is to ſay, on, &c. was poſſeſſed of divers large quantities of mahogany, to wit, twenty-three logs of mahogany; and being ſo poſſeſſed of the ſaid twenty-three logs of mahogany, he the ſaid plaintiff afterwards, to wit, on, &c. ſold to one A. B. the ſaid twenty-three logs of mahogany for a large ſum of money, to wit, the ſum of thirty pounds of lawful money of Great Britain, upon credit, and afterwards, to wit, on, &c. delivered to the ſaid A. B. a part of the ſaid mahogany, to wit, ten logs of the ſaid mahogany: And whereas alſo afterwards, to wit, on, &c. the ſaid A. B. died, without having taken away the reſidue of the ſaid mahogany: And whereas alſo the ſaid plaintiff, before the making of the promiſe and undertaking hereafter mentioned, to wit, on, &c. had entered a caveat in the prerogative court of the archbiſhop of Canterbury to *prevent the proving any will of the ſaid A. B.* or the granting letters of adminiſtration for the eſtate and effects of the ſaid A. B.: and thereupon, in conſideration that the ſaid plaintiff, at the ſpecial inſtance and requeſt of the ſaid defendant would withdraw his ſaid caveat from the ſaid prerogative court of the ſaid archbiſhop of Canterbury, and would, at the like ſpecial inſtance

and

requeſt of the ſaid defendant, deliver to M. B. widow of the ſaid A. B. the reſidue of the ſaid twenty-three logs of mahogany, he the ſaid defendant, on, &c. undertook, and then and there faithfully promiſed the ſaid plaintiff, that he the ſaid defendant would ſee and procure payment to be made to the ſaid plaintiff for the whole of the ſaid mahogany: And the ſaid plaintiff in fact ſays, that he, relying and confiding in the ſaid promiſe and undertaking of the ſaid defendant, afterwards, to wit, on, &c. at, &c. did withdraw his ſaid caveat from the ſaid prerogative court of the archbiſhop of Canterbury, and on, &c. did deliver to the ſaid M. B. widow of the ſaid A. B. deceaſed, the reſidue of the ſaid twenty three logs of mahogany; of all which ſaid premiſes the ſaid defendant then and there had notice: Yet the ſaid defendant, not regarding his ſaid promiſe and undertaking by him made in that behalf to the ſaid defendant as aforeſaid, but contriving, &c. hath not, although often requeſted, ſeen or procured payment to be made to the ſaid plaintiff for the whole of the ſaid mahogany, or any part thereof; but on the contrary thereof, he the ſaid defendant ſo to do hath hitherto wholly refuſed, and ſtill doth refuſe. And whereas alſo the ſaid plaintiff, on, &c. (as before, only ſay that A. B. died *inteſtate*, without having taken away, &c. and omitting the proving any will, that the defendant promiſed to pay him the ſaid plaintiff the price of the ſaid laſt-mentioned mahogany, to wit, the ſaid laſt-mentioned ſum of thirty pounds, when he the ſaid plaintiff ſhould be thereto afterwards requeſted): Yet, &c. And whereas, &c. (goods ſold and delivered to M. B. at defendant's requeſt). And whereas, &c. (*Quantum meruit* to ditto; money paid, &c.)

2d Count.

3d Count.

Quære, Whether the firſt Count is not within the ſtatute of Frauds; on that account I inſerted the ſecond, though contrary to the real fact. F. Buller.

——, to wit. F. A. and W. H. churchwardens of A. in the ſaid county of M. complain of T. B. late churchwarden of A. aforeſaid, being, &c.: for that whereas the ſaid defendant, on, &c. at, &c. was indebted to the ſaid plaintiffs, as churchwardens as aforeſaid, in the ſum of twenty pounds of lawful money of Great Britain, for ſo much money by the ſaid defendant, as late churchwarden as aforeſaid, to and for the uſe of the pariſhioners of A. aforeſaid, before that time had and received; and being ſo indebted, &c.: And whereas alſo the ſaid defendant afterwards, to wit, on, &c. at, &c. accounted together with the ſaid plaintiffs, as churchwardens as aforeſaid, of and concerning divers ſums of money before that time due and owing from the ſaid defendant, as late churchwarden as aforeſaid, to the pariſhioners, and then in arrear, &c. &c.: Yet, &c. to defraud the ſaid pariſhioners and the ſaid plaintiffs, as churchwardens as aforeſaid [lay a particular requeſt]: Wherefore the ſaid plaintiffs ſay, that the ſaid pariſhioners are injured, and have ſuſtained damage to the value of forty pounds; and therefore they bring their ſuit,

Declaration by the churchwardens of A. againſt their predeceſſor, for money received by him for the uſe of the pariſhioners.

WHEREAS

Declaration for the cure of defendant's servant of a broken leg, at the request of defendant's wife, in his absence.

WHEREAS the said defendant, on, &c. at, &c. was indebted to the said plaintiff in the sum of thirty pounds of lawful money of Great Britain, as well for divers medicines, cordials, ointments, plaisters, fermentations, and other necessaries, before that time found, provided, applied, and administered, by the said plaintiff, at the special instance and request of A. B. the wife of the said defendant, in his absence, in and about the healing, setting, and curing the broken legs of one G. R. then the servant of the said defendant, whereof the said G. R. before that time, and whilst he was the servant of the said defendant, laboured and languished, and which said legs were broken by misfortune in and during the said G. R.'s said service of the said defendant, as for the work and labour of the said plaintiff in and about the administering and applying of the said medicines, cordials, &c. and other necessaries, to the said G. R. the servant of the said defendant, by the said plaintiff done and performed; and being so indebted, &c. And whereas, &c. (*quantum meruit* to ditto) And whereas, &c. (add two other Counts *at the request of defendant*).

Declaration against an executor at the suit of an attorney, for his fees and disbursements.

MIDDLESEX, to wit. Sarah Parker, executrix of the last will and testament of R. P. her late husband, deceased, was attached, by a writ of privilege of our sovereign lord the king, issuing out of the court here, to answer J. G. gent. one of the attornies of the court of common bench of the said king, according to the liberties and privileges of the said court for attornies of the said court, used and approved of in the said court from time immemorial, of a plea of trespass on the case; and whereupon the said J. G. in his own proper person complains: that whereas the said R. P. in his life-time, to wit, on, &c. at, &c. was indebted unto the said J. G. in seven pounds of lawful money of Great Britain, for so much money by the said John before that time paid, laid out, and expended, as attorney and solicitor for the said R. P. and upon his retainer, in prosecuting and defending divers suits at law and in equity in this court here, and other his majesty's courts of record at Westminster aforesaid, and for his fees and labour, care and diligence, in prosecuting and defending those suits, and also for other the work and labour, care and diligence, of the said John before that time done, performed, and bestowed by the said John in and about other the business of the said R. P. and at his special instance and request; and being so indebted, he the said R. P. in his lifetime afterwards, to wit, on, &c. in consideration thereof, undertook, and then and there faithfully promised the said J. G. to pay him the said sum of money, when he the said R. P. should be thereto afterwards requested: And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said J. G. at the like special instance and request of the said R. P. in his life time, and upon his retainer, had before that time prosecuted and defended divers other suits at law and in equity in this court here and other his majesty's courts of record at Westminster aforesaid, as attorney or solicitor of the said Robert, and at the like special instance and request of the said R. P. in his life time had

wrote

wrote and done divers other buſineſſes for the ſaid R. P. he the ſaid R. P. in his lifetime undertook, and then and there faithfully promiſed the ſaid J. G. to pay him ſo much money as he therefore reaſonably deſerved to have for his fees and labour, care and diligence, in this behalf, and alſo all ſuch ſums of money which the ſaid John, on occaſion of the proſecuting and defending the ſaid ſuits laſt-mentioned, and doing the ſaid buſineſs laſt aforeſaid, had paid, laid out, and expended, when he the ſaid R. P. ſhould be thereto afterwards requeſted: And the ſaid John avers, that he the ſaid John, for his fees and labour, care and diligence, in this behalf, deſerved to have of the ſaid R. P. in his life-time other ſeven pounds of like lawful money, and on occaſion of the proſecuting and defending the ſaid ſuits laſt-mentioned, and doing the ſaid other buſineſſes laſt-mentioned, had paid, laid out, and expended other ſeven pounds of like lawful money, to wit, at, &c.; whereof the ſaid R. P. in his life-time then and there had notice: Yet the ſaid R. P. in his lifetime, and the ſaid S. P. after his death, not regarding his ſaid ſeveral promiſes and undertakings of the ſaid R. P. in his lifetime in form aforeſaid made, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid John in this behalf, hath not yet paid the ſaid ſeveral ſums of money, or any part thereof (although to do this the ſaid R. P. in his lifetime afterwards, to wit, on, &c. and the ſaid S. P. after the death of the ſaid R. P. to wit, on, &c. at, &c. was requeſted); but to pay the ſame to the ſaid John he the ſaid Robert in his lifetime wholly refuſed, and the ſaid S. P. ſince his death hath hitherto wholly refuſed, and ſtill doth refuſe to pay the ſame, to the damage of the ſaid John of ſeven pounds; and therefore he brings his ſuit, &c.

Declaration by the remaining aſſignee of a bankrupt againſt a defendant, for goods ſold the bankrupt by the defendant. Counts alſo for the uſe and occupation of a houſe.

LONDON, to wit. Thomas Mitchell, aſſignee of the debts, goods, and effects, which were of Thomas Walker and Ann Singleton, bankrupts, according to the form of the ſtatutes made and now in force concerning bankrupts, complains of Samuel Farmer, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf: for that whereas the ſaid Samuel, on the firſt day of November 1780, at London aforeſaid, to wit, in the pariſh of St. Mary-le-Bow in the ward of Cheap, was indebted to the ſaid Thomas Mitchell, as aſſignee as aforeſaid, and alſo one John Price, who was then aſſignee of the debts, goods, and effects of the ſaid Thomas Walker and Ann Singleton with the ſaid Thomas Mitchell (and which ſaid John Price has been ſince removed from being ſuch aſſignee by virtue of an order of the lord high chancellor), in the ſum of five thouſand pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the ſaid Thomas Mitchell and John Price, as aſſignees as aforeſaid, before that time ſold and delivered to the ſaid Samuel, at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid Samuel, in conſideration thereof, afterwards, and before the removal of the ſaid John Price as aforeſaid, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid,

aforeſaid, undertook, and to the ſaid Thomas Mitchell and John Price, as aſſignees as aforeſaid, then and there faithfully promiſed, to pay to them the ſaid ſum of money, when he the ſaid Samuel ſhould be thereunto afterwards requeſted: And whereas alſo afterwards, and before the removal of the ſaid John Price as aforeſaid, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid Thomas Mitchell and John Price, as aſſignees as aforeſaid, had before that time, at the like inſtance and requeſt of the ſaid Samuel, ſold and delivered to the ſaid Samuel divers other goods, wares, and merchandizes, he the ſaid Samuel undertook, and to the ſaid T. M. and J. P. aſſignees as aforeſaid, then and there faithfully promiſed, to pay to them ſo much money as the laſt-mentioned goods, wares, and merchandizes, at the time of the ſale and delivery thereof, were reaſonably worth, when he the ſaid Samuel ſhould be thereunto afterwards requeſted: And the ſaid Thomas Mitchell in fact ſaith, that the ſaid laſt-mentioned goods, wares, and merchandizes, at the time of the ſale and delivery thereof, were reaſonably worth other five thouſand pounds of lawful money, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid Samuel afterwards, and before the removal of the ſaid J. P. to wit, on the ſame day and year, there had notice. And whereas, &c. (two other Counts like the preceding, for the uſe and occupation of divers to wit, forty meſſuages, buildings, and erections, and alſo for the uſe and hire of divers utenſils and neceſſary things, with the appurtenances, of the ſaid T. M. and J. P. ſituate, ſtanding, and being at Batterſea in the county of Surry): Yet the ſaid Samuel, not regarding his ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid T. M. and J. P. before the removal of the ſaid J. P. and the ſaid T. M. after the ſaid J. P. was removed, in this behalf, hath not paid to the ſaid T. M. and J. P. before the removal of the ſaid J. P. or to the ſaid T. M. ſince the removal of the ſaid J. P. the ſaid ſeveral ſums of money, or any part thereof (although ſo to do he the ſaid Samuel afterwards, to wit, on, &c. at, &c. was by the ſaid T. M. and J. P. requeſted); but to pay the ſame, or any part thereof, to the ſaid T. M. and J. P. before the removal of the ſaid J. P. or to the ſaid T. M. ſince the removal of the ſaid J. P. he the ſaid Samuel hath hitherto altogether refuſed, and ſtill doth refuſe, to pay the ſame to the ſaid T. M. And whereas alſo he the ſaid Samuel afterwards, to wit, on, &c. at, &c. was indebted to the ſaid T. M. in the further ſum of five thouſand pounds of like lawful money, for divers other goods, wares, and merchandizes by the ſaid T. M. as aſſignee as aforeſaid, and by one other J. P. who was alſo aſſignee of the debts, goods, and effects of the ſaid T. W. and A. S. with the ſaid T. M. but who has ſince been duly diſcharged from being an aſſignee as aforeſaid, before that time ſold and delivered, at his like inſtance and requeſt, he the ſaid Samuel, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. (*Quantum valebant*

valebant in consideration that the said T. M. and J. P. as assignees as aforesaid, had, before the said J. P. was so discharged from being an assignee as aforesaid, at the like instance and request of the said Samuel, sold and delivered to the said Samuel divers other goods, wares, and merchandizes, he the said Samuel undertook, &c. Add two other Counts for the use of the houses and utensils like the two last Counts; money had and received, &c. with common breach to the five last promises; damage, &c.)

Præcipe for declaration by the assignees of a bankrupt (who had been in partnership with one A. B. since dead), for work and labour, and for divers materials found in the life-time of A. B. and for goods sold.

MIDDLESEX, to wit. If Enos ——, John Pineger, Thomas Gadhill, and Richard Rankin, assignees of the debts, goods, and effects which were of John Capstack, surviving partner of James Capstack, deceased, being a bankrupt, according to the form and effect of the several statutes made and now in force concerning bankrupts, shall make you secure, &c. then put by gages and safe pledges Richard Pocock, late of, &c. that he be before our lord the king in eight days of St. Hilary wheresoever, &c. to shew: for that whereas the said R. P. heretofore, to wit, on, &c. at, &c. was indebted to the said J. C. and J. C. (which said J. C. died before the bankruptcy of the said J. C. leaving him the said J. C. then surviving), in the lifetime of the said J. C. and before the said J. C. became bankrupt, in one hundred and thirty pounds of lawful money of Great Britain, for the work and labour of the said J. C. and J. C. before that time done and performed for the said R. P. at his special instance and request; and for divers materials and necessary things used and employed in and about that work and labour before that time found and provided by the said J. C. and J. C. at the like instance and request of the said J. C.; and being so indebted, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became a bankrupt, to pay them the said sum of money when he the said R. P. should be thereto afterwards requested. And whereas afterwards, in the lifetime of the said J. C. and before the said J. C. became bankrupt, to wit, on, &c. at, &c. in consideration that the said J. C. and J. C. at the like instance and request of the said R. P. had before that time done and performed other work and labour for the said R. P. and had also found and provided divers other materials and necessary things used and employed in and about the said last-mentioned work and labour, he the said R. P. undertook, and then and there faithfully promised the same J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, to pay them so much money as they therefore reasonably deserved to have, when he the said Richard should be thereto afterwards requested: And the said plaintiffs, assignees as aforesaid, in fact say, that the said J. C. and J. C. in the lifetime of the said J. C. and before the said J. C. became bankrupt, therefore reasonably deserved to have had of the said R. P. the further sum of one hundred and thirty pounds of like lawful

lawful money, to wit, at, &c.; whereof the ſaid R. P. afterwards,
Goods ſold and delivered. to wit, on, &c. there had notice. And whereas the ſaid R. P. afterwards, to wit, on, &c. at, &c. was indebted to the ſaid J. C. and J. C. in the lifetime of the ſaid J. C. and before the ſaid J. C. became bankrupt, in the further ſum of one hundred and thirty pounds of like lawful money, for divers goods, wares, and merchandizes before that time ſold and delivered by the ſaid J. C. and J. C. to the ſaid R. P. at his like inſtance and requeſt; and being ſo indebted, he the ſaid R. P. in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid J. C. and J. C. in the lifetime of the ſaid J. C. and before the ſaid J. C. became bankrupt, to pay them the ſaid ſum of money, when he the ſaid R. P. ſhould be thereto afterwards
Quantum valebant. requeſted. And whereas afterwards, in the lifetime of him the ſaid J. C. and before the ſaid J. C. became bankrupt, to wit, on, &c. at, &c. in conſideration that the ſaid J. C. and J. C. had before that time ſold and delivered to the ſaid R. P. divers other goods, wares, and merchandizes to the ſaid R. P. at his like inſtance and requeſt, he the ſaid R. P. undertook, and then and there faithfully promiſed the ſaid J. C. and J. C. in the lifetime of the ſaid J. C. and before the ſaid J. C. became bankrupt, to pay them ſo much money as the ſaid goods, wares, and merchandizes, at the time of the ſale and delivery thereof, were reaſonably worth, when he the ſaid R. P. ſhould be thereto afterwards requeſted: And the ſaid plaintiffs, aſſignees as aforeſaid, in fact ſay, that the ſaid laſt-mentioned goods, wares, and merchandizes, at the time of the ſale and delivery thereof, were reaſonably worth other one hundred and thirty pounds of like lawful money, to wit, at, &c.; whereof the ſaid R. P.
Conclusion. afterwards, to wit, on, &c. there had notice: Yet the ſaid R. P. not regarding his ſaid ſeveral promiſes and undertakings, ſo by him made in manner and form as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid J. C. and J. C. in the lifetime of the ſaid J. C. and the ſaid J. C. after the death of the ſaid J. C. and before the ſaid J. C. became bankrupt, and the ſaid plaintiffs, aſſignees as aforeſaid, ſince the bankruptcy of the ſaid J. C. in this behalf, hath not paid the ſaid ſeveral ſums of money, or any part thereof, to them, or any or either of them (although to pay the ſame the ſaid R. P. was oftentimes requeſted, as well by the ſaid J. C. and J. C. in the lifetime of the ſaid J. C. as by the ſaid J. C. after the death of the ſaid J. C. and before the ſaid J. C. became bankrupt, and alſo by the ſaid plaintiffs, aſſignees as aforeſaid, ſince the bankruptcy of the ſaid J. C. to wit, on, &c. at, &c.); but to pay the ſame to them, or any or either of them, he the ſaid R. P. hath hitherto wholly refuſed, and ſtill refuſes to pay
Account ſtated. the ſame to the ſaid plaintiffs, aſſignees as aforeſaid. And whereas the ſaid R. P. after the death of the ſaid J. C. and before the ſaid J. C. became bankrupt, to wit, on, &c. at, &c. accounted together with the ſaid J. C. as ſurviving partner of the ſaid J. C. of and concerning divers other ſums of money before that time due and owing from the ſaid R. P. to the ſaid J. C. and J. C. in the life-

time

time of the ſaid J. C. and then being in arrear and unpaid, and upon that account the ſaid R. P. was then and there found in arrear and indebted to the ſaid J. C. as ſuch ſurviving partner as aforeſaid, in the ſum of one hundred and four pounds of like lawful money; and being ſo found in arrear and indebted, he the ſaid R. P. in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid J. C. as ſuch ſurviving partner as aforeſaid, before he became bankrupt, to pay him the ſaid ſum of money laſt-mentioned, whenever, after the expiration of ſix months then next following, he the ſaid R. P. ſhould be thereto afterwards requeſted: Yet the ſaid R. P. not regarding his ſaid laſt-mentioned promiſe and undertaking, ſo by him made in manner and form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid J. C. as ſuch ſurviving partner as aforeſaid, before he became bankrupt, and the ſaid plaintiffs, aſſignees as aforeſaid, ſince the bankruptcy of the ſaid J. C. in this behalf, hath not paid the ſaid laſt-mentioned ſum of money, or any part thereof, to them, or any or either of them (although to pay the ſame he the ſaid R. P. was requeſted by the ſaid plaintiffs, aſſignees as aforeſaid, afterwards, and after the expiration of the ſaid ſix months, and ſince the bankruptcy of the ſaid J. C. to wit, on, &c. at, &c.); but to pay the ſame he the ſaid R. P. hath hitherto wholly refuſed, and ſtill refuſes, to the damage of the ſaid plaintiffs, aſſignees as aforeſaid, of one hundred and thirty pounds, as it is ſaid.

Declaration againſt defendants, wife, together with one A B who is outlawed, were in partnerſhip, for goods ſold, money lent, &c. &c.

MIDDLESEX, to wit. Domingo Felles, late of Maxwell-ſtreet, in the county of Middleſex, merchant, and Joze Antonio Ferroize, late of Saint Martin's-lane, in the ſame county, gentleman, were attached to anſwer unto Lewis Gevaux in a plea of treſpaſs upon the caſe, &c.; and thereupon the ſaid William Lewis, by W. Loveridge his attorney, complains: that whereas the ſaid Domingo and Joze Antonio, together with one Charles Alder, late of Weſtminſter, in the ſaid county of Middleſex, gentleman, formerly a partner and joint dealer with them the ſaid D. and J. A. (which ſaid Charles Alder hath been, and now is, in due manner outlawed in the court of our lord the now king before the king himſelf here), on the ſecond day of December, in the year of Our Lord 1776, to wit, at Weſtminſter, in the county of Middleſex aforeſaid, were indebted to the ſaid Lewis in one hundred and twenty pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the ſaid Lewis before that time ſold and delivered to the ſaid D. and J. A. and to the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, and at their ſpecial inſtance and requeſt; and being ſo indebted, they the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, in conſideration thereof, afterwards, and before the outlawry of the ſaid C. A. to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, undertook, and faithfully promiſed the ſaid Lewis, to

pay

pay him the ſaid ſum of money, when they ſhould be thereto afterwards requeſted. And whereas afterwards, to wit, on the ſame day and year, at Weſtminſter aforeſaid, in conſideration that the ſaid Lewis, at the like ſpecial inſtance and requeſt of the ſaid D. and J. A. and of the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, had before that time ſold and delivered to the ſaid D. and J. A. and to the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, divers other goods, wares, and merchandizes, they the ſaid D. and J. A. and C. A. afterwards, and before the outlawry of the ſaid Charles, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, undertook, and faithfully promiſed the ſaid Lewis, to pay him ſo much money as he therefore reaſonably deſerved to have, when they the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, ſhould be thereto afterwards requeſted: And the ſaid Lewis avers, that he therefore reaſonably deſerved to have of the ſaid D. and J. A. and of the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, other twelve hundred pounds of like lawful money, to wit, at Weſtminſter aforeſaid; whereof the ſaid D. J. A. and C. A. who hath been and is ſo outlawed as aforeſaid, afterwards, to wit, on the ſame day and year aforeſaid, there had notice. And whereas the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, afterwards, to wit, on the ſame day and year, at Weſtminſter aforeſaid, were indebted to the ſaid Lewis in other one hundred and twenty pounds of like lawful money, for money by the ſaid Lewis before that time lent and advanced to the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, and at their like ſpecial inſtance and requeſt; and for other monies by the ſaid Lewis before that time laid out, expended, and paid for the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, and at their like ſpecial inſtance and requeſt; and for other money by the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, before that time had and received to the uſe of the ſaid Lewis; and being ſo indebted, they the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, in conſideration thereof, afterwards, and before the outlawry of the ſaid C. A. to wit, on the ſame day and year, at Weſtminſter aforeſaid undertook, and faithfully promiſed the ſaid Lewis, to pay him the ſaid laſt-mentioned ſum of money, when they ſhould be thereto afterwards requeſted: Yet the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, before the outlawry of the ſaid C. A. and the ſaid D. and J. A. ſince the ſaid outlawry, not regarding the ſaid ſeveral promiſes and undertakings ſo made in this behalf as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid Lewis in this behalf, have not, nor hath either of them, as yet paid the ſaid ſeveral ſums of money, or any part thereof to the ſaid Lewis (although to do this they the ſaid D. and J. A. and the ſaid C. A. who hath been and is ſo outlawed as aforeſaid, before the outlawry of the ſaid C. A. to wit, on the ſame day and year aforeſaid,

Quantum valebant.

Money lent and advanced.

Concluſion.

ſaid, at Weſtminſter aforeſaid, were requeſted by the ſaid Lewis; and although the ſaid D and J. A. have been thereto ſeverally requeſted by the ſaid Lewis ſince the ſaid outlawry of the ſaid C. A. to wit, on the firſt day of January in the year of Our Lord 1778, and often both before and afterwards, to wit, at Weſtminſter aforeſaid; but they to do this have, and each of them hath, hitherto wholly refuſed, and the ſaid D. and J. A. ſtill do, and each of them doth, wholly refuſe ſo to do: wherefore the ſaid Lewis ſaith he is injured, and hath ſuſtained damage to the value of one hundred and twenty pounds; and therefore he brings his ſuit, &c.

For the work and labour of a ſurgeon or apothecary, at the ſuit of an adminiſtratrix, againſt the executrix of an executor

MIDDLESEX, to wit. A. H. widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of R. H. her late huſband, deceaſed, at the time of his death, who died inteſtate, complains of P. S. and M. his wife, late M. B. ſpinſter, which ſaid M. is executrix of the laſt will and teſtament of A. B. widow, her late mother, deceaſed, who was in her lifetime, and at the time of her death, executrix of the laſt will and teſtament of F. D. widow, deceaſed, who was in her lifetime, and at the time of her death, executrix of the laſt will and teſtament of C. D. deceaſed, being in the cuſtody of the marſhal of the marſhalſea of our ſovereign lord the king before the king himſelf, in a plea of treſpaſs on the caſe: for that whereas the ſaid C. D. in his lifetime, to wit, on, &c. at, &c. was indebted to the ſaid R. H. in his lifetime in one hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the ſaid R. H. in his lifetime, before that time done, performed, and beſtowed in and about the healing and curing of the ſaid C. D. in his lifetime, and divers other perſons of the family of the ſaid C. D. of divers diſeaſes and maladies under which he and they had laboured and languiſhed, and at the ſpecial inſtance and requeſt of the ſaid C. D. in his lifetime, and for divers medicines, medicinal potions, plaiſters, and other neceſſary things, before that time found and provided, adminiſtered and applied, by the ſaid R. H. in his lifetime, in and about that particular, and at the like ſpecial inſtance and requeſt of the ſaid C. D. in his lifetime; and being ſo indebted, he the ſaid C. D. in his lifetime, in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid R. H. in his lifetime, to pay him the ſaid ſum of money, when he the ſaid C. D. ſhould be thereto afterwards requeſted. And whereas, &c. (add a *quantum meruit* accordingly). And whereas, &c. (this Count for work and labour as a ſurgeon or apothecary, in viſiting of and preſcribing other medicines, phyſic, &c. to, &c. labour, &c. And whereas, &c. (*quantum meruit* accordingly). And whereas, &c. (for goods ſold and delivered). And whereas, &c. (money laid out, &c.; and conclude as at the ſuit of an adminiſtratrix)

Declaration for agency as an attorney.

FOR the work and labour, care and diligence, of the ſaid plaintiff, by him the ſaid plaintiff before that time done, performed, and beſtowed for the ſaid defendant, as his agent, in the doing, performing, and beſtowing, of certain affairs and buſineſs wherein he ſaid defendant had been and was retained and employed to act as an attorney at law and otherwiſe, at the ſpecial inſtance and requeſt of ſaid defendant, and alſo for money by the ſaid plaintiff before that time laid out, expended, and paid for the ſaid defendant, in the courſe of ſuch agency or buſineſs, at the like ſpecial inſtance and requeſt; and being ſo indebted, &c. in conſideration that ſaid plaintiff, at the like ſpecial inſtance and requeſt of ſaid defendant, had before that time done, &c other his work, &c. for the ſaid defendant as his agent, in the doing, performing, and tranſacting, of certain affairs and buſineſs wherein ſaid defendant had been and was retained and employed as an attorney at law and otherwiſe, he ſaid defendant undertook, &c.: And ſaid plaintiff avers, &c. (Count for work and labour; money laid out, &c.) V. LAWES.

Quantum meruit.

Declaration for an equal moiety for building a party-wall built by plaintiff between his and defendant's ground, and uſed by the defendant.

FOR that whereas ſaid defendant, on, &c. at, &c. was indebted to ſaid plaintiff in one hundred pounds of lawful money of Great Britain, being an equal expence for building a certain party-wall before then erected and built by ſaid plaintiff, at, &c. between certain grounds of him ſaid plaintiff there and certain grounds of ſaid defendant there, and next adjoining thereto, and which ſaid party-wall had before then been made uſe of by the ſaid defendant as a party-wall; and in the further ſum of one hundred pounds of like lawful money, being one equal moiety of the expence of building of a certain other party-wall before then erected and built by ſaid plaintiff, at, &c. between certain buildings of ſaid plaintiff and certain buildings of ſaid defendant there, and which ſaid laſt-mentioned wall had been alſo before then made uſe of by the ſaid defendant as a party-wall; and being ſo indebted, &c.

Declaration for not paying money due on premiums for aſſurance.

LONDON, *ſſ.* The London Aſſurance Company complain of James Wadham, being &c.: for that whereas the ſaid James heretofore, to wit, on, &c. was indebted to the ſaid London Aſſurance in one hundred and [illegible] pounds of lawful money of Great Britain, for certain premiums of aſſurance before that time and then due and payable from the ſaid James to the ſaid London Aſſurance, for and in reſpect of their having, at the ſpecial inſtance and requeſt of the ſaid James, before that time in due manner inſured certain ſums of money to the ſaid James, upon divers goods, &c. of the ſaid James before then laden and put on board certain ſhips or veſſels; and being ſo indebted, he the ſaid James, in conſideration thereof, afterwards, to wit, on, &c. undertook, &c. (2d Count, money laid out, paid, &c., 3d Count, money lent and advanced; 4th Count, money had and received, an account ſtated; and common concluſion.)

And

And the ſaid James Wadham, by James Fiſher his attorney, comes and defends the wrong and injury when, &c. and ſaith, that the ſaid London Aſſurance ought not to have or maintain their aforeſaid action againſt him; becauſe he ſaith, that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned (if any ſuch were ever made) were, and each and every of them was, made by him the ſaid James and one William Smith jointly, and not by him the ſaid James ſolely; and that after the making of the ſaid promiſes and undertakings, and before the exhibiting of the bill of the ſaid London Aſſurance, to wit, on, &c. the ſaid London Aſſurance, by their certain deed or writing of releaſe, then and there made by them the ſaid London Aſſurance to the ſaid William Smith, and ſealed with the common ſeal of the ſaid London Aſſurance, and bearing date the day and year laſt aforeſaid, for the conſiderations therein mentioned and contained, did remiſe, releaſe, and for ever quit claim unto the ſaid William Smith, his heirs, executors, and adminiſtrators, the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and all and all manner of action or actions, cauſe and cauſes of action, ſuits, bills, bonds, writings obligatory, debts, dues, duties, accounts, ſum and ſums of money, judgments and executions, extents, quarrels, controverſies, treſpaſſes, damages, and demands whatſoever, both in law and equity, or otherwiſe howſoever, which they the ſaid London Aſſurance ever or then had againſt the ſaid William Smith, or which they the ſaid London Aſſurance ſhould or might, at any time or times thereafter, have claim, challenge, or demand, for or by reaſon or means of the ſaid promiſes and undertakings, or any other matter, cauſe, or thing whatſoever, from the beginning of the world unto the day of the date of the ſaid deed or writing of releaſe, as by the ſaid deed or writing of releaſe, which is in the poſſeſſion of the ſaid William Smith, more fully appears, and this he the ſaid James is ready to verify: wherefore he prays judgment if the ſaid London Aſſurance ought to have or maintain their aforeſaid action againſt him, &c.

V. LAWES.

Plea to the foregoing declaration, that the ſaid premiſes in the declaration mentioned were made by defendant and one A. B. jointly, and that before the exhibiting the bill the plaintiffs executed a *releaſe* to A. B.

LONDON, to wit. John Lee, late of, &c. and Emanuel Walker, late of, &c. were attached to anſwer William Mauduit in a plea of treſpaſs on the caſe; and thereupon the ſaid plaintiff, by A. H. his attorney, comes and gives the Court here to underſtand and be informed, that after the iſſuing of the original writ of the ſaid plaintiff againſt them the ſaid defendants, and before this day, the ſaid Emanuel was in due manner outlawed in the court of our lord the king, before the king himſelf here, in this preſent action or ſuit, and ſo from thence hitherto hath been, and ſtill continues, outlawed, which the ſaid John doth not deny; and thereupon the ſaid plaintiff, by his attorney aforeſaid, complains againſt the ſaid John: for that whereas he the ſaid John, and one J. R. S. deceaſed, and Emanuel, and whom the ſaid J. L. and Emanuel, who is ſo outlawed as aforeſaid, have ſurvived in the lifetime of the ſaid

Declaration for goods ſold and delivered, againſt two ſurviving partners, one of whom is outlawed.

J. R. S. to wit, on, &c. were indebted to the ſaid plaintiff in one thouſand pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes, by the ſaid plaintiff before that time ſold and delivered to the ſaid J. L. J. R. S. and E. who, &c. and at their ſpecial inſtance and requeſt; and being ſo indebted, they the ſaid J. L. J. R. S. and E. who, &c. afterwards, in the lifetime of the ſaid J. R. S. to wit, on, &c. at, &c. undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay him the ſaid ſum of money, when they the ſaid J. L. J. R. S. and E. who, &c. ſhou'd be thereto afterwards requeſted: And whereas afterwards, in the lifetime of J. R. S. to wit, on, &c. in conſideration that the ſaid plaintiff, at the like ſpecial inſtance and requeſt of the ſaid J. L. J. R. S. and E. who, &c. had before that time ſold and delivered to the ſaid J. L. J. R. S. and E. who, &c. divers other goods, wares, and merchandizes, they the ſaid J. L. J. R. S. and E. who, &c. undertook, and then and there faithfully promiſed the ſaid plaintiff, to pay him ſo much money as he therefore reaſonably deſerved to have, when they the ſaid J. L. J. R. S. and E. who, &c. ſhould be thereto afterwards requeſted: And the ſaid plaintiff avers, that he therefore reaſonably deſerved to have of the ſaid J. L. J. R. S. and E. who, &c. other one thouſand pounds of like lawful money, to wit, at, &c. whereof the ſaid J. L. J. R. S. and E. who, &c. afterwards, in the lifetime of the ſaid J. R. S. to wit, on, &c. there had notice (Add the uſual Clauſes, and following concluſion): Yet the ſaid J. L. J. R. S. and E. who, &c. not regarding, &c. but contriving, &c. have not, nor hath any, &c. although ſo to do the ſaid J. L. J. R. S. and E. who, &c. before the ſaid outlawry, was, had been, were, and each of them was, oftentimes requeſted: And the ſaid J. L. ſince the ſaid outlawry was had, hath been requeſted by the ſaid plaintiff, as well in the lifetime of the ſaid J. R. S. to wit, on, &c. as afterwards, to wit, at, &c.; but they to do this have hitherto wholly refuſed, and the ſaid J. L. and E. who, &c. ſtill refuſes ſo to do, (Damage; ſuit.)

V. LAWES.

Declaration againſt defendant, for not paying for the nurſing of his child.

MIDDLESEX, to wit. Henry Folkes complains of John Bukwith, being, &c.: for that whereas heretofore, to wit, on, &c. at, &c. in, &c. in conſideration that the ſaid Henry, at the ſpecial inſtance and requeſt of the ſaid John, would take a certain infant child of him the ſaid John to nurſe, and would find and provide it in nurſing, and in meat, drink, waſhing, and other neceſſaries, he the ſaid John undertook, and then and there faithfully promiſed the ſaid Henry, to pay him for the ſame the ſum of four ſhillings and ſixpence of lawful, &c. for each and every week that he ſhould ſo find and provide the ſaid child in ſuch nurſing, meat, drink, waſhing, and other neceſſaries: And the ſaid Henry in fact ſays, that he, confiding in the ſaid promiſe and undertaking of the ſaid John, ſo by him in manner and form aforeſaid made, did after the making thereof, to wit, on, &c. at, &c. take the ſaid infant child of the ſaid John to nurſe, and hath always from thence hitherto found and provided it in nurſing, and in meat, drink, waſhing, and other neceſſaries,

faries: And the ſaid Henry in fact further ſays, that on, &c. a large ſum of money, to wit, the ſum of fourteen pounds of lawful, &c. at and after the rate of four ſhillings and ſixpence for each and every of divers, to wit, ſixty-five weeks, during which time he the ſaid Henry found and provided the aforeſaid infant child of the ſaid John in nurſing, meat, drink, waſhing, and other neceſſaries, and ending and ended on the day and year laſt aforeſaid, became due, owing, and payable by and from the ſaid John to the ſaid Henry, according to the tenor and effect of the aforeſaid promiſe and undertaking of the ſaid John; whereof the ſaid John afterwards, and before the exhibiting the bill of the ſaid Henry, to wit, on, &c. at, &c. had notice: Yet the ſaid John, not regarding, &c. but contriving, &c. the ſaid Henry in this behalf, hath not as yet paid the ſaid ſum of fourteen pounds, or any part thereof, to the ſaid Henry (although ſo do he the ſaid John was requeſted by the ſaid Henry afterwards, to wit, on, &c. at, &c.; but he to do hath hitherto wholly refuſed, and ſtill refuſes ſo to do. And whereas the ſaid John afterwards, to wit, on, &c. at, &c. was indebted to the ſaid Henry in thirty-five pounds of like, &c. for meat, &c. by the ſaid Henry before that time found and provided for a certain other infant child, at the like ſpecial inſtance and requeſt of the ſaid John; and being ſo indebted &c. And whereas afterwards, to wit, on, &c. in conſideration that the ſaid Henry, at the like ſpecial inſtance and requeſt of the ſaid John, had before that time found and provided a certain other infant child other meat, &c. he the ſaid John undertook, &c.: And the ſaid Henry avers, &c. And whereas, &c. (for work and labour, and alſo the other common Counts; and common concluſion.)

LONDON, to wit. John Hodges complains of Jacob Lindo (arreſted by the name of John Lindo), being in the cuſtody of, &c.: for that whereas the ſaid Jacob heretofore, to wit, on, &c. at, &c. was indebted to the ſaid J. H. in a certain large ſum of money, to wit, the ſum of two thouſand two hundred and twenty pounds of lawful money of Great Britain, for a certain large quantity or portion, to wit, three thouſand pounds, of and in a certain public fund or ſtock of this kingdom, commonly called the three per cent. conſolidated annuities, by the ſaid J. H. before that time bargained and ſold to the ſaid J. L. and under and in purſuance of that ſale transferred, at the ſpecial inſtance and requeſt of the ſaid J. L.; and being ſo indebted, he the ſaid Jacob in conſideration thereof, afterwards, to wit, on, &c. undertook, &c. &c. And whereas afterwards, to wit, on, &c. in conſideration that the ſaid J. H. at the like ſpecial inſtance and requeſt of the ſaid J. L. had before that time ſold to the ſaid J. L. and purſuant to ſuch ſale transferred, a certain other quantity or portion, to wit, three thouſand pounds, of and in a certain other public ſtock or fund of this kingdom, commonly called, &c. he the ſaid Jacob undertook, &c. to pay him ſo much money as he therefore reaſonably deſerved to have, when he the ſaid J. L. ſhould

Declaration in B. R. for 3000l. ſtock ſold and transferred to defendant, arreſted by the name of John inſtead of Jacob.

ſhould be thereto afterwards requeſted: And the ſaid John avers, &c. (add all the common Counts; account ſtated; and common concluſion.) V. LAWES.

Count in a declaration on defendant's promiſe to indemnify plaintiff for entering into a recognizance for defendant's appearance at the next quarter ſeſſions to anſwer a complaint alledged againſt him by his wife, againſt defendant, for not indemnifying, &c.

WHEREAS, on the eighth of December 1760, at Penrith aforeſaid, in conſideration that the ſaid A. at the ſpecial inſtance and requeſt of the ſaid B. had, before M. H. eſquire, then one of the juſtices of our lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county, entered into a recognizance in a large ſum of money, to wit, the ſum of pounds, with a condition for the appearance of the ſaid B. at the then next general quarter ſeſſions of the peace to be holden for the ſaid county, to anſwer a complaint of Ann the wife of the ſaid John, of a battery alledged by her to have been made by the ſaid B. upon her the ſaid Ann, he the ſaid B. undertook, and then and there faithfully promiſed the ſaid A. that the ſaid B. would indemnify and ſave harmleſs the ſaid A. againſt the ſaid recognizance, and all coſts, charges, and damages that might happen to ariſe to him thereby or thereon, or by reaſon or means thereof: And the ſaid A. in fact ſays, that the next general quarter ſeſſions of the peace holden in and for the ſaid county, after the making of the ſaid promiſe and undertaking, was holden on the fourteenth of January 1761, to wit, at P. aforeſaid: Yet the ſaid B. not regarding, &c. hath not indemnified or ſaved harmleſs the ſaid A. againſt the ſaid recognizance, and all or any coſts or charges or damages which aroſe to him by means thereof, either by appearing at the ſaid general quarter ſeſſions, to anſwer the above mentioned complaint according to the form and effect of the condition of the ſaid recognizance, or in any other manner whatſoever, but hath altogether neglected and refuſed ſo to do; by means whereof the ſaid A. hath been put unto great trouble, and hath been forced to lay out and expend, and hath laid out and expended, a large ſum of money, to wit, twenty pounds, in and about obtaining the diſcharge from the ſaid recognizance, and the ſaid A. hath, on that occaſion, ſuſtained great injury and damage, to wit, to the amount of forty pounds, that is to ſay, at P.: whereupon, &c. J. WALLACE,

See *Aſſumpſit* to Indemnify, Vol. II.

Declaration by an adminiſtratrix againſt an adminiſtrator, on his promiſe, in conſideration of aſſets, to pay plaintiff a debt due from defendant's inteſtate to plaintiff's inteſtate at the time of their deaths.

CORNWALL, to wit. F. T. late of the borough of Truro, in the ſaid county of Cornwall, farmer, was attached to anſwer F. P. in a plea of treſpaſs on the caſe, &c.; and thereupon the ſaid Elizabeth, by A. B. her attorney, complains: for that whereas one S. T. in his lifetime was indebted to one J. P. in divers large ſums of money, for divers goods, wares, and merchandizes, by the ſaid J. before that time ſold and delivered to the ſaid Stephen, at his ſpecial inſtance and requeſt. And whereas, after the death of the ſaid

J. Potter,

J. Potter, to wit, on the ſeventh of May 1770, adminiſtration of all and ſingular the goods, chattels, and credits which were of the ſaid J. P. at the time of his death, who died inteſtate, was in due form of law granted by John Slack, archdeacon of the archdeaconry of Cornwall, to whom the granting that adminiſtration of right belonged, to the ſaid E. to wit, at aforeſaid: And whereas alſo, after the death of the ſaid S. adminiſtration of all and ſingular the goods, chattels, rights, and credits which were belonging to the ſaid S. at the time of his death, at Bodmin aforeſaid, in the county aforeſaid, in due form of law was granted to the ſaid Francis: And whereas, after the granting the adminiſtration to the ſaid Elizabeth and F. reſpectively, to wit, on the twenty-ninth of May 1772, at B. aforeſaid, in the county aforeſaid, the ſaid ſeveral ſums of money due from the ſaid Stephen being wholly unpaid to the ſaid J. P. in his lifetime, as to the ſaid Elizabeth adminiſtratrix as aforeſaid; and after his death an account was had and ſtated between the ſaid Elizabeth, adminiſtratrix as aforeſaid; and the ſaid Francis, as adminiſtrator as aforeſaid, was found in arrear, and indebted to the ſaid Elizabeth, as adminiſtratrix as aforeſaid, in the ſum of of, &c. to wit, at B. aforeſaid, in the county aforeſaid: And whereas the ſaid F. as ſuch adminiſtrator as aforeſaid, before the ſtating of the ſaid account, had received and become poſſeſſed of, and at the time of ſtating of the ſaid account had in his hands divers goods, chattels, and effects which were of the ſaid Stephen at the time of his death, to the value of, &c. and more, which were liable to the payment and diſcharge of the ſaid debt due to the ſaid Elizabeth, as adminiſtratrix of the ſaid J. P. as aforeſaid; and by reaſon thereof the ſaid Francis became liable to pay to the ſaid Elizabeth the ſaid ſum of pounds, when he the ſaid F. ſhould be thereto afterwards requeſted; and being ſo liable, he the ſaid F. in conſideration thereof, afterwards, to wit, on the day and year laſt aforeſaid, at B. aforeſaid, in the county aforeſaid, undertook, and to the ſaid E. then and there faithfully promiſed to pay to her the ſaid ſum of when he the ſaid F. ſhould be thereto afterwards requeſted: And whereas the ſaid Francis, adminiſtrator as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, at aforeſaid, in the county aforeſaid, accounted with the ſaid Elizabeth, as adminiſtratrix as aforeſaid, of and concerning divers ſums of money from the ſaid F. as adminiſtrator as aforeſaid, to the ſaid E. as adminiſtratrix as aforeſaid, before that time due and owing, and then being in arrear and unpaid; and upon that account the ſaid F. as adminiſtrator as aforeſaid, was then and there found in arrear to the ſaid Elizabeth, as adminiſtratrix as aforeſaid, in the ſum of pounds, of, &c.; and being ſo found in arrear to the ſaid Elizabeth, he the ſaid F. in conſideration thereof, afterwards, to wit, on the ſame day and year aforeſaid, at B. aforeſaid, undertook, and to the ſaid E. then and there faithfully promiſed, to pay to her the ſaid laſt-mentioned ſum of money, when he the ſaid F. ſhould be thereto afterwards requeſted: Yet the ſaid F. although often requeſted, hath not yet paid to the ſaid Elizabeth the ſaid ſeveral

ſums of money, or any part thereof; but to pay the ſame to the ſaid Elizabeth the ſaid Francis hath hitherto altogether refuſed, and ſtill doth refuſe: whereupon the ſaid Elizabeth ſays ſhe is injured, and hath ſuſtained damage to the value, &c. and therefore ſhe brings ſuit, &c. and the ſaid Elizabeth brings here into court the ſaid letters of adminiſtration granted to her the ſaid E. o. the goods, chattels, and credits of the ſaid J. P. which witneſs the commiſſion of the ſaid adminiſtration to the ſaid E. in form aforeſaid, the date whereof is the ſame day and year in that behalf aforeſaid.

FOSTER BOWER.

Præcept by ſurviving partner againſt defendant, for work and labour in carrying goods, &c. done in the lifetime of both partners.

WILTSHIRE, to wit. If T. C. ſhall give you ſecurity to proſecute his ſuit, then put by ſure and ſafe pledges A. A. late of S. in the county of W. eſquire, that he be before our lord the king on the morrow of All Souls, wherſoever our ſaid lord the king ſhall then be in England, to ſhew: for that whereas the ſaid A. on the twentieth of January 178[illegible], at Wilton, in the ſaid county of W. was indebted to the ſaid T. and one W. C. ſince deceaſed, whom he the ſaid T. hath ſurvived, in the ſum of pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the ſaid T. and W. ſince deceaſed, in his lifetime, by themſelves and their ſervants, and with their horſes, mares, and geldings, and other cattle, and waggons, carts, and carriages, by them the ſaid T. and W. ſince deceaſed, before that time done, performed, and beſtowed, at the ſpecial inſtance and requeſt of the ſaid A. in and about the carrying, conveying, and delivering of divers goods, chattels, wares, and merchandizes of and for the ſaid A. from S. aforeſaid to London, and from London aforeſaid to S. aforeſaid, and from and to divers other parts and places; and being ſo indebted, he the ſaid A. in conſideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and to the ſaid T. and W. ſince deceaſed, in the lifetime of the ſaid W. then and there faithfully promiſed, to pay to them the ſaid ſum of money, whenever he the ſaid A. ſhould be thereto afterwards requeſted: And whereas alſo afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid Thomas and W. deceaſed, in the lifetime of the ſaid W. at the like inſtance and requeſt of the ſaid A. had, by themſelves and their ſervants, and with their horſes, mares, geldings, and other cattle, and with waggons, carts, and carriages, before that time done, performed, and beſtowed other their work and labour, care and diligence, of and for the ſaid A. in and about the carrying, conveying, and delivering of divers other goods, chattels, wares, and merchandizes of and for the ſaid A. from S. aforeſaid to L. aforeſaid, and from L. aforeſaid to S. aforeſaid, and to divers other parts and places, he the ſaid A. undertook, and to the ſaid T. and W. ſince deceaſed, in his lifetime, then and there faithfully promiſed, to pay to them ſo much money as they reaſonably deſerved to have for the ſame, whenever he the ſaid A. ſhould be thereunto afterwards requeſted: And the ſaid T. avers, that he the ſaid T. and the ſaid W. ſince deceaſed, in the lifetime of the ſaid W. therefore reaſonably

ſonably deſerved to have of and from the ſaid A. the ſum of other pounds of, &c. to wit, at, &c.; whereof the ſaid A. afterwards, to wit, on, &c. had notice (Count for work and labour, and *quantum meruit*, lent and advanced, and paid, &c. had and received; account ſtated): Nevertheleſs the ſaid A. not regarding his ſaid ſeveral promiſes and undertakings ſo by him made as aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid T. and W. ſince deceaſed, in his lifetime, and the ſaid T. ſince the deceaſe of the ſaid W. whom he the ſaid T. hath ſurvived, in this behalf, hath not yet paid the ſaid ſeveral ſums of money, or any or either of them, or any part thereof, to the ſaid T. and W. ſince deceaſed, in his lifetime, or to any or either of them, or to the ſaid T. ſince the deceaſe of the ſaid W. (although often requeſted ſo to do); but to pay the ſame, or any or either of them, or any part thereof, to the ſaid T. and W. ſince deceaſed, in his lifetime, or to either of them, or to the ſaid T. after the deceaſe of the ſaid W. hath hitherto altogether refuſed, and ſtill doth refuſe, to the damage of the ſaid T. of pounds, as it is ſaid, &c. *Drawn by* MR. GRAHAM.

YORKSHIRE, to wit. T. W. late of, &c. yeoman, was attached to anſwer W. H. of a plea of treſpaſs on the caſe, &c.; and thereupon the ſaid W. his attorney, complains: that whereas the ſaid T. on firſt of May 1768, at aforeſaid, in the ſaid county, was indebted to the ſaid W. in the ſum of ten pounds of, &c. for the uſe of divers bulls of the ſaid W. before that time uſed for the bulling of divers cows of the ſaid T. by the permiſſion of the ſaid W. and at the ſpecial inſtance and requeſt of the ſaid T.; and being ſo indebted, *aſſumpſit*, &c.: And whereas alſo afterwards, to wit, on, &c. at, &c. in conſideration that the ſaid W. at the ſpecial inſtance and requeſt of the ſaid T. had before that time permitted divers other bulls of the ſaid W. to be bulling of divers other cows of the ſaid T. and that the ſaid laſt-mentioned bulls of the ſaid W. had accordingly bulled the ſaid laſt-mentioned cows of the ſaid T. he the ſaid T. undertook, &c. to pay to him ſo much money as he therefore reaſonably deſerved to have, when he the ſaid William ſhould be thereunto afterwards requeſted: And the ſaid William in fact ſays, that he reaſonably deſerved to have of the ſaid T. ten pounds of, &c. to wit, at, &c.; whereof the ſaid W. afterwards, to wit, on, &c. had notice: (work and labour; *quantum meruit*; and other common Counts.)

Declaration the uſe bull, for bulling defendant's cow.

JAMES WALLACE.

Defendant pleaded general iſſue. The action was originally commenced in the ſheriff's town court, held by the ſheriff of the county of York for his wapentake of , and plaintiff declared in like manner as above; to which declaration defendant put in a ſpecial plea, claiming a right of having cows bulled and ſerved by plaintiff's bull, being the town bull, as defendant was poſſeſſed of an eſtate in the townſhip of C.; but upon the removal of this cauſe into the court of common pleas, by *mandat ad eundum*, defendant pleaded the general iſſue. The plaintiff wiſhed to know whether, under this plea, defendant might give in evidence the right he claimed of being ſerved by plaintiff's bull.

Opinion.

This action is founded upon contract, either expreſſed or implied. I do not find that

that there is any expreſs agreement between the parties, and therefore the action muſt be maintained upon an implied one, which the law will raiſe to give a ſatisfaction to the plaintiff for the uſe of his bull, which the defendant has had for his cows, and therefore ought to make a recompence to the plaintiff. But this implied contract may be invalidated by evidence, that the defendant had a right to the uſe of the bull without paying any ſatisfaction, by proving, if the caſe will admit of it, the obligation on the plaintiff to keep a bull, and that he was intitled to the uſe of him; and this is proper evidence under the general iſſue in this action, and the whole merits may be tried upon the iſſue: the plaintiff muſt therefore, beſides the proof of the bulling, have evidence to controvert the right, if defendant makes it neceſſary.

JAMES WALLACE.

Declaration for premiums on policies of inſurance.

FOR that whereas, on the firſt of November 1788, at, &c. the ſaid defendant was indebted to the ſaid plaintiff in the ſum of pounds of, &c. for certain rewards and premiums of inſurance before that time due and payable from the ſaid defendant to the ſaid plaintiff for the underwriting and ſubſcribing of divers policies of inſurance, of, for, on the behalf, and on the account of the ſaid defendant, before that time underwritten and ſubſcribed by the ſaid plaintiff for the inſurance of divers large ſums of money, upon the ſafe arrival of certain ſhips, goods, and merchandizes as therein mentioned, and particularly expreſſed, at the ſpecial inſtance and requeſt of the ſaid defendant; and being ſo indebted, &c. (2d Count, money paid, &c. lent and advanced, had and received, and an account ſtated; and breach.) *Drawn by* MR. GRAHAM.

PLEAS IN ASSUMPSIT.

IN AVOIDANCE.

COVERTURE.

Plea.

AND the ſaid Frances Holles, in her proper perſon, comes and defends the wrong and injury, when, &c. and ſays, *actio non*; becauſe ſhe ſays, that ſhe the ſaid Frances, at the time of the making of the ſaid promiſes and undertakings in the ſaid declaration above ſpecified, was and yet is the wife of and married to William lord viſcount Holles Vane, which ſaid William lord viſcount Holles Vane is now living, to wit, at W. aforeſaid, in the county aforeſaid; and this, &c: wherefore, &c. if, &c.

KINGSTEAD AND OTHERS *againſt* COUNTESS OF LANESBOROUGH. } PLEA, 1ſt, General iſſue. 2d, *Non aſſumpſit infra ſex annos.* 3d, Coverture.

Replication, that the defendant and her huſband lived ſeperate, to wit, the huſband in Ireland and the defendant in England, and that by a deed of ſeparation ſhe had an allowance from the huſband to the day of his death.

1ſt, Similiter to general iſſue. 2d, Iſſue on ſtatute of Limitations: And the ſaid plaintiffs, as to the ſaid plea of the ſaid defendant by her laſtly above pleaded in bar ſays, *præcludi non*; becauſe they ſay, that the ſaid defendant and A. B. (the huſband), long before the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration, to wit, on, &c. at, &c. were parted and ſeparated, and lived ſeparate and apart from each other, and always from thence, and until the time of the death of the ſaid A. B. lived ſeparate and apart from each other, to wit, the ſaid A. B. in the kingdom

dom of Ireland, and the ſaid defendant in England; and the ſaid defendant during all that time, by a certain agreement of ſeparation and maintenance for that purpoſe made and provided, had a large maintenance allowed and duly paid to her by the ſaid A. B. for her ſeparate ſupport and maintenance; and this, &c.: wherefore, &c. and their damages by reaſon of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to be adjudged to them, &c.

For that the matter contained in the ſaid replication is not a legal anſwer to the plea of the ſaid defendant, and that the ſaid plaintiffs have not in their ſaid replication ſet forth the date of the parties to the ſubſtance of the deed of ſeparation and maintenance in the ſaid replication, nor the amount of ſuch pretended maintenance, nor when payable, nor have the plaintiffs brought into court the ſaid deed or counterpart thereof; and for that the ſaid replication offers to put in iſſue a matter foreign to the matter of bar pleaded by the ſaid defendant; and for that the ſaid replication is in other reſpects uncertain, &c. *Drawn by* MR. CROMPTON.

Cauſes of demurrer.

A feme covert living apart from her huſband, and having a ſeparate maintenance, may contract and be ſued as a feme ſole. Corbett v. Poelnitz and Uxor. Durnford and Eaſt Rep. 5.

TURTLE *againſt* LADY UNSLEY.

AND the ſaid Benjamin prays a day to imparl to the ſaid plea, and it is granted him, &c.; and thereupon a day is given to the parties aforeſaid to come before our lord the king, on, &c. that is to ſay, for the ſaid Benjamin to imparl to the ſaid plea, and then to reply to the ſame, &c.: at which day, before our lord the king at Weſtminſter, came the parties aforeſaid, by their attornies aforeſaid; and the ſaid B. ſays, that notwithſtanding anything above alledged by the ſaid defendant, the ſaid bill of the ſaid B. ought not to be quaſhed, becauſe he ſays, that ſhe the ſaid defendant, before the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the exhibiting of the ſaid bill of the ſaid plaintiff, to wit, *on*, &c. at, &c. in, &c. voluntarily, and of her own accord, did elope from and abſent herſelf from the ſaid (huſband) her ſaid huſband, and continually from that time until and at the times of the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and of the exhibiting of the ſaid bill of the ſaid B. hitherto did, and ſtill doth, abſent herſelf, and lived ſeparate and apart in adultery from her ſaid huſband, and hath not been, nor is yet reconciled to her ſaid huſband, to wit, at, &c. in, &c, and that whilſt ſhe the ſaid defendant ſo abſented herſelf and lived ſeparate and apart in adultery from her ſaid huſband as aforeſaid, ſhe the ſaid defendant made the ſeveral promiſes and undertakings in the ſaid declaration mentioned upon her own credit, and for her own neceſſary uſe and account, ſolely and ſeparately, in the manner of a feme ſole, and not upon or for the uſe, credit, or account of her ſaid huſband, to wit, at,

(a) Replication (to a plea of coverture), that defendant eloped from her huſband before making the promiſes, and hath ever ſince lived in adultery.

This was the day when defendant eloped with one Bliſſet, againſt whom the huſband brought an action, and had a verdict before this action was brought.

(a) This is a replication to a plea in abatement.

&c.: and this, &c.: wherefore he prays judgment, and that his ſaid bill may be adjudged good, and that the ſaid defendant may anſwer over thereto, &c.

Demurrer to the 1ſt replication.

And the ſaid defendant, as to the ſaid plea of the ſaid Benjamin by him above pleaded, in reply to the ſaid plea of the ſaid defendant by her above pleaded in abatement, ſays, that the ſame plea, and the matters therein contained, are not ſufficient in law to prevent the ſaid bill from being quaſhed; to which ſaid plea, in manner and form as the ſame is above pleaded in reply, ſhe the ſaid defendant hath no need, nor is ſhe bound by the law of the land, to anſwer: wherefore, for want of a ſufficient replication in this behalf, ſhe the ſaid defendant, as before, prays judgment, and that the ſame may be quaſhed, &c; and for cauſes of demurrer in law in this behalf, the ſaid defendant, according to the form of the ſtatute in ſuch caſe made and provided, ſhews to the court here the cauſes following, to wit, for that the ſaid plea of the ſaid Benjamin above pleaded in reply is not an anſwer to the ſaid plea of the ſaid defendant, but a direct admiſſion and confeſſion of the fact therein alledged; and alſo for that the ſame plea, in manner and form as the ſame is above pleaded in reply, contains and endeavours to bring in iſſue ſeveral diſtinct matters; and for that the ſaid replication is in other reſpects uncertain, inſufficient, and informal, &c.

Joinder to ditto.

And the ſaid Benjamin ſays, that the ſaid plea of the ſaid Benjamin, and the matters therein contained, are good and ſufficient in law to compel the ſaid defendant to anſwer to the aforeſaid bill of the ſaid B. againſt the ſaid defendant, which ſaid plea, and the matters therein contained, the ſaid B. is ready to verify and prove as the ſaid court ſhall award; and becauſe the ſaid defendant hath not anſwered, nor in any wiſe contradicted the ſame, he the ſaid defendant, as before, prays judgment, and that the ſaid defendant may be compelled to anſwer over to the ſaid bill of the ſaid B: But becauſe the court of our lord the king, now here is not yet adviſed what judgment to give of and concerning the premiſes, a day is given to the parties aforeſaid to come before our lord the king at Weſtminſter, on next after to hear judgment thereon, for that the court of our lord the king here is not yet adviſed thereof, &c.

Argument for Plaintiff.

Elopement and adultery, and no reconciliation during the life of the huſband will bar dower. Stat. Weſtm 1. ſt. 1. c. 34. 2 Inſt. 435.

Adultery pleaded in caſes of dower, Raſt Ent. 230. pl 9 Roll. Ent. 260.

If a wife elope from her huſband, he ſhall not be liable even for neceſſaries after elopement. Salk. 118. Stra. 113. 875. 647. Sid 191. Skinn. 323.

Argument for Defendant.

Notwithſtanding elopement and adultery, ſhe cannot be ſued alone without her huſband

While huſband living, not in exile or abjuration, wife cannot be ſued alone. 2. Black. Rep. 1079. 1195.

Upon argument of this caſe, Lord Mansfield ſaid it was new, and therefore deſired to hear civilians; but the cauſe being too trifling for plaintiff to expend money upon a fu ther argument, he moved for judgment; and the Court gave it *quod reſpondeat ouſter.*

AND the ſaid plaintiffs, as to the ſaid plea of the ſaid defendant by her ſecondly above pleaded in bar, ſays, *precludi non*; becauſe proteſting, that the ſaid plea, in manner and form as the ſame is above pleaded and ſet forth, and the matters therein contained, are inſufficient in law to bar the ſaid plaintiffs from having the ſaid action againſt her, proteſting alſo; that the ſaid defendant was not married to nor under coverture of the ſaid R. B. in the plea mentioned, in manner and form as the ſaid defendant hath in her ſaid plea in that behalf alledged: Nevertheleſs, for replication in this behalf the ſaid plaintiffs ſay, that the ſaid defendant, before the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the making of any or either of them, and before the ſeveral cauſes of action in the ſaid declaration mentioned, or any or either of them, accrued, that is to ſay, on, &c. at, &c. eloped from the ſaid R. R. in the ſaid plea mentioned; and that ſhe hath from thence hitherto lived, and ſtill doth live, ſeparate and apart from the ſaid R. R.; and that they the ſaid plaintiffs did and performed the work and labour in the declaration mentioned for the ſaid defendant, and at her requeſt, and on her credit only; and that they ſold the goods and merchandizes in the ſaid declaration mentioned to the ſaid defendant, and at her requeſt and on her credit only; and that they laid out, expended, and paid the money in the laſt Count of the ſaid declaration mentioned, for the ſaid defendant, and at her requeſt, and on her credit only, to wit, at, &c.; and this, &c.: wherefore, &c. &c.

J. MORGAN.

Replication to a plea of coverture, proteſting as to the ſufficiency of the plea; proteſting alſo, that the defendant is not a *feme* covert. Replication, that before the cauſe of action accrued the defendant had eloped from her huſband, and that the work, &c. was done for the defendant at her requeſt and on her credit only.

AND the ſaid Charles and Robert, as to the ſaid plea of the ſaid dame by her above pleaded, ſay, that by reaſon of any thing by the ſaid dame in that plea above alledged *precludi non*; becauſe they ſay, that before and at the time of making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and from thence until and at the time of exhibiting the bill of them the ſaid Charles and Robert againſt the ſaid dame, ſhe the ſaid dame lived, and ſtill doth live, ſeparate and apart from the ſaid Robert Robertſon her huſband; and that ſhe the ſaid dame had, for and during all the time aforeſaid, and hath, a large, ample, and ſufficient allowance, as and for her ſeparate maintenance, and which ſaid allowance hath been, for and during all that time, paid to her the ſaid dame, to wit, at, &c. aforeſaid: And the ſaid Charles and Robert further ſay, that the ſaid dame, ſo living ſeparate and apart from her ſaid huſband, and having ſuch allowance as aforeſaid, the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned were, and each and every of them was, made by the ſaid dame, as a *feme ſole* upon her own ſeparate credit, of her ſaid huſband, to wit, at, &c. aforeſaid; and this they the ſaid Charles and Robert are ready to verify: wherefore they pray judgment, and their damages by them ſuſtained on occaſion of

Replication to plea of coverture, admitting the coverture, but alledging that defendant lived apart from her huſband, and had a ſeparate maintenance.

of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to be adjudged to them, &c.

WILLIAM GARROW.

DURESS.

Plea of dureſs of impriſonment, and that promiſſory note was ſo obtained.

AND the ſaid defendant, by his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid plaintiff *actio non*; becauſe he ſaith, that he the ſaid defendant, at the time of the making the ſaid promiſſory note in the ſaid firſt Count of the ſaid declaration mentioned, and of the ſaid firſt promiſe and undertaking thereupon, was impriſoned by the ſaid plaintiff and others by his contrivance, to wit, at, &c. aforeſaid, and was there kept and detained in priſon until he the ſaid defendant, by force and dureſs of that impriſonment, then and there made and ſubſcribed the ſaid promiſſory note in the ſaid firſt Count of the ſaid declaration mentioned, and the ſaid firſt promiſe and undertaking to the ſaid plaintiff thereupon; and this, &c.: wherefore, &c. if, &c. And the ſaid defendant, as to the ſecond, third, fourth, and fifth promiſes and undertakings in the ſaid declaration mentioned, ſays *non aſſumpſit*; and of this he puts himſelf upon the country, &c.

Replication, that defendant was at large.

And the ſaid plaintiff ſaith, that by anything above by the ſaid defendant in pleading alledged, he ought not to be barred from having and maintaining his ſaid action againſt him the ſaid defendant; becauſe he ſaith, that the ſaid defendant, at the time of the making, &c. (as in the plea) was of his own accord at large, and out of any priſon, and made, &c. &c. of his the ſaid defendant's own accord and mere free will, and not by any force and dureſs of impriſonment of the ſaid defendant, as the ſaid defendant hath above in his ſaid plea alledged; and this he the ſaid plaintiff prays may be enquired of by the country, and the ſaid defendant doth ſo likewiſe: therefore, &c.

R. DRAPER.

Plea by defendant in cuſtody: 1ſt, *non-aſſumpſit*; 2d, dureſs of impriſonment. 1ſt Count, on a bill of exchange.

HUBARD *at the ſuit of* DA COSTA.

AND the ſaid M. in his own proper perſon, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid B. M. hath above thereof complained againſt him: and of this he puts himſelf upon the country; and the ſaid B. M. doth ſo likewiſe. And for further plea in this behalf, as to the firſt promiſe and undertaking in the ſaid declaration mentioned, he the ſaid M. by the leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, ſays, that the ſaid B. M. ought not to have or maintain his aforeſaid action

tion thereof againſt him; becauſe he ſays, that he the ſaid M. before and at the time of the making of the ſaid bill of exchange in the ſaid declaration, was impriſoned by the ſaid defendant and others in colluſion with him, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and then and there continued under that impriſonment, and was then and there kept and detained in priſon until he the ſaid M. through the force and reſtraint of that impriſonment, there made and gave the ſaid bill of exchange in the ſaid declaration mentioned, to the ſaid defendant; and this he is ready to verify: wherefore he prays judgment if the ſaid B. M. ought to have or maintain his aforeſaid action thereof againſt him, &c.

To ſecond plea, plaintiff replies, defendant was free and at large; and thereupon iſſue.

And the ſaid B. M. as to the ſaid plea of the ſaid M. by him laſtly above pleaded in bar, ſaith, that he, by reaſon of anything in that plea by the ſaid M. alledged as to the ſaid firſt promiſe and undertaking in the ſaid declaration mentioned, ought not to be barred from having or maintaining his aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid M. at the time of the making the ſaid bill of exchange in the ſaid declaration mentioned, was free and at large, and not under any impriſonment; and that he the ſaid M. made the ſaid bill of exchange in the ſaid bill of exchange mentioned, of his own free will, and not by force or reſtraint of impriſonment, as the ſaid M. hath above alledged; and this he prays may be enquired of by the country, and the ſaid M. does ſo likewiſe: therefore the ſheriffs are commanded that they do cauſe to come here in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

This cauſe was tried before the Right Hon. Sir Charles Pratt, knt. Lord Chief Juſtice of the Court of Common Pleas, at Guildhall, London, on Saturday, day of July 1763, the laſt adjourned ſitting after Trinity Term, 3. Geo. 3 by a ſpecial jury of merchants of the city of London, and a verdict of 3000l. given for plaintiff, after ſeveral learned arguments by the counſel; who were, Mr. Serjeant Davy, Mr Serjeant Bowelland, and Mr. Serjeant Aſpinall, for plaintiff, Mr Serjeant Hewett, Mr. Serjeant Nares, and Mr. Serjeant Glynn, for defendant.

INFANCY.

Plea of infancy by guardian.

AND now at this day, that is to ſay, on Wedneſday next after fifteen days from the day of Eaſter in this ſame term, until which day, &c. as well the ſaid Thomas by his ſaid attorney as the ſaid James by A. B. his guardian, who is admitted by the court here to defend for the ſaid James, do come before our lord the king at Weſtminſter; and the ſaid James defends the wrong and injury, when, &c. and ſays, *actio non*; becauſe he ſays, that he the ſaid James, at the time of the making the ſaid ſeveral promiſes in the ſaid declaration

claration mentioned, was within the age of twenty-one years, to wit, of the age of nineteen years and no more; and this, &c.: wherefore, &c. if, &c. FOSTER BOWER.

Replication to all the Counts, except the 9th, 11th, 12th that the defendant was a lieutenant in the horſe-guards, and the articles charged were ſuitable to his degree.

And the ſaid Thomas, as to the ſaid plea of the ſaid James by him above pleaded in bar, as to the ſeveral promiſes and undertakings in the firſt, ſecond, third, fourth, fifth, ſixth, ſeventh, eighth, and tenth Counts of the ſaid declaration mentioned, ſaith, that he, by reaſon of any thing by the ſaid James in his ſaid plea as to thoſe ſeveral promiſes and undertakings above alledged, ought not to be barred from having or maintaining his aforeſaid action thereof againſt him; becauſe proteſting, that the ſaid James, at the time of the making of the ſaid promiſes and undertakings herein above particularly mentioned, was not of full age, to wit, of the age of twenty-one years, as he the ſaid James hath above in his ſaid plea in that behalf above alledged. For replication in this behalf the ſaid Thomas ſaith, that the ſaid James, before and at the time of the making of the ſaid ſeveral promiſes and undertakings, was a lieutenant in his majeſty's horſe-guards; and that the ſaid ſtable in the firſt Count, and the ſtable in the ſecond Count of the ſaid declaration mentioned, were uſed and occupied by him the ſaid James for the ſaid ſpace of time in thoſe Counts mentioned; and that the ſaid horſe meat, ſtabling, care, and attendance in the fifth and ſixth Counts of the ſaid declaration mentioned, were found, provided, and beſtowed by the ſaid Thomas, for, in, and about the feeding and keeping of divers horſes, mares, and geldings of him the ſaid James; and that as well the ſaid horſes, mares, and geldings, as the ſaid ſtables, horſe meat, care, and attendance; and alſo the ſaid horſes, chaiſes, and other carriages, in the third and fourth Counts of the ſaid declaration mentioned; and that the ſaid goods, wares, and merchandizes, in the ſeventh and eighth Counts of the ſaid declaration mentioned, were neceſſary and ſuitable to the eſtate and degree of the ſaid James, to wit, at, &c.: And the ſaid Thomas in fact further ſaith, that the money in the tenth Count of the ſaid declaration mentioned was money laid out, expended, and paid by the ſaid Thomas, for, in, and about the buying and providing for the ſaid James divers other neceſſaries, ſuitable to the degree of the ſaid James, and at his ſpecial inſtance and requeſt, to wit, at, &c.; and this, &c.: wherefore, &c. and his damages by him ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings herein before particularly mentioned, to be adjudged to him, &c.

And as to the 9th, 11th, and 12th Counts, ſaith proſequi.

And as to ſo much of the ſaid plea of the ſaid James, by him above pleaded in bar, as relates to the ſeveral promiſes and undertakings of the ninth, eleventh, and laſt Counts of the ſaid declaration mentioned, the ſaid Thomas ſaith, that he will not further proſecute his ſaid bill againſt the ſaid James, as to the ſeveral promiſes and undertakings in thoſe laſt-mentioned Counts of the ſaid declaration; therefore let the ſaid James be acquitted and go thereof without day, &c. EDWARD LAW.

And

And the ſaid James, as to the ſaid plea of the ſaid Thomas, by him above pleaded to the ſaid plea of the ſaid James, by him above pleaded in bar, as to the ſeveral promiſes and undertakings in the ſaid firſt, ſecond, third, fourth, fifth, ſixth, ſeventh, eighth, ninth, and tenth Counts of the ſaid declaration mentioned, ſays, that he the ſaid Thomas, by reaſon of any thing therein alledged, *actio non*; becauſe, he ſays, that the ſaid ſtable, in the ſaid firſt Count of the ſaid declaration mentioned, and the ſaid ſtable in the ſaid ſecond Count of the ſaid declaration mentioned; and the ſaid horſe-meat, ſtabling, care and attendance, in the fifth and ſixth Counts of the ſaid declaration mentioned; and the ſaid horſes, chaiſes and other carriages, in the ſaid third and fourth Counts of the ſaid declaration mentioned; and the ſaid goods, wares, and merchandizes in the ſeventh and eighth Counts of the ſaid declaration mentioned, were not, nor were any of them, ſuitable and neceſſary to the eſtate and degree of him the ſaid James: and that the money in the tenth Count of the ſaid declaration mentioned, was not money laid out and expended, or paid by the ſaid Thomas, for, in, and about the buying and providing for the ſaid James, neceſſaries ſuitable to the degree of the ſaid James in manner and form as the ſaid Thomas hath in and by his ſaid plea, by him above in reply pleaded in that behalf alledged: And of this he puts himſelf upon the country, &c.; and the ſaid Thomas doth the like, &c.

Rejoinder iſſue on replication.

Verdict for plaintiff.

ROSE *againſt* HUNT. } AND the ſaid Thomas, by John Parker his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And the ſaid Thomas, for further plea in this behalf, by leave of the court here to him for this purpoſe firſt granted, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt him; becauſe, he ſays, that at the time of making the ſaid ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, he the ſaid Thomas was under the age of twenty-one years, to wit, of the age of twenty years and no more, that is to ſay, at London aforeſaid, in the parith and ward aforeſaid; and this he is ready to verify, wherefore he prays judgment, whether the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.: And the ſaid Thomas, for further plea in this behalf, by like leave of the court here to him for this purpoſe firſt granted, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt him; becauſe, he ſays, that he the ſaid Thomas did not at any time, within ſix years next before the exhibiting of the bill of the ſaid John, undertake or promiſe

Plea in *aſſumpſit* for money lent and on an account ſtated—1ſt, general iſſue; 2d, infancy; 3d, *non aſſumpſit infra ſex annos*.

If under age at the time of pleading, muſt plead by guardian. Imp. Prac. 459, 463.

3d Plea.

promiſe in manner and form as the ſaid John hath above thereof complained againſt him; and this he is ready to verify: wherefore he prays judgment, if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.

WILLIAM WALTON.

Replication to 1ſt plea, iſſue; to 2d, confirmatory promiſes. to 3d iſſue.

Vide Brothwick & Carruther Term. Rep. 648. that under the laſt replication the plaintiff need only prove a promiſe, and defendant muſt ſhew he was under age at the time.

HUNT *againſt* ROSE.

ſſ. And the ſaid John, as to the ſaid plea of the ſaid Thomas, by him firſt above pleaded in bar, as to the ſaid ſeveral promiſes and undertakings in the ſaid declaration, and whereof he hath put himſelf upon the country, doth the like, &c. And as to the ſaid plea of the ſaid Thomas, by him ſecondly above pleaded in bar, he the ſaid John ſays, that, notwithſtanding any thing in that plea alledged he the ſaid John ought not to be barred from having and maintaining his aforeſaid action thereof againſt him the ſaid Thomas; becauſe, he ſays, that though true it is that the ſaid Thomas, at the time of making of the ſaid promiſes and undertakings in the ſaid declaration mentioned, was under the age of twenty-one years, as the ſaid Thomas hath above in pleading alledged: Yet the ſaid John in fact ſays, that the ſaid Thomas hath, ſince the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, attained the age of twenty-one years, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and that after the ſaid Thomas attained the ſaid age of twenty-one years, and before the exhibiting the ſaid bill of the ſaid John againſt the ſaid Thomas, to wit, on the firſt of April in the year 1787 aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, he the ſaid Thomas agreed to and confirmed the ſaid ſeveral promiſes and undertakings of the ſaid Thomas in the ſaid declaration mentioned, and each and every of them; and this he the ſaid John is ready to verify, wherefore he prays judgment and his damages by him ſuſtained by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to be adjudged to him, &c. And as to the ſaid plea of the ſaid Thomas, by him laſtly above pleaded in bar, he the ſaid John ſays, that by reaſon of any thing by the ſaid Thomas in that plea alledged, he the ſaid John ought not to be barred from having and maintaining his aforeſaid action thereof againſt him the ſaid Thomas; becauſe he ſays, that the ſaid Thomas did, within ſix years next before the exhibiting the bill of the ſaid John, undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him the ſaid Thomas, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and this he the ſaid John prays may be enquired of by the country, and the ſaid Thomas doth the like, &c.

I have taken for granted that the plaintiff does not mean to deny the plea of infancy, but to rely on ſome promiſe by defendant, ſubſequent to his coming of age, and have replied accordingly.

T. BARROW.

And

Rejoinder to replication of confirmatory promise of an infant.

And the ſaid Thomas, as to the ſaid plea of the ſaid John, by him above in reply pleaded to the ſaid plea of the ſaid Thomas, by him ſecondly above pleaded in bar, ſays, that he did not, after he the ſaid Thomas attained the age of twenty-one years, agree to and confirm the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, or any or either of them, in manner and form as the ſaid John hath above in his ſaid replication alledged; and of this he the ſaid Thomas puts himſelf upon the country, &c. and the ſaid John doth the like, &c.

Vide 1. T. R. 648.

Plea of infancy by guardian.

STEVENSON, *at the ſuit of* WILLIAMS. } AND ſaid John Stevenſon, who is under the age of twenty-one years, by William Jones his guardian, as ſpecially admitted by the court of our lord the king now here, to defend for defendant, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid defendant did not undertake or promiſe in manner and form as he ſaid plaintiff hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf he ſaid defendant, by leave, &c. ſays, that ſaid plaintiff, *actio non*, becauſe he ſaith, that ſaid defendant, at the ſeveral times of the making of the ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned, was an infant within the age of twenty one years, to wit, of the age of nineteen years and no more, to wit, at London, &c. aforeſaid; and this, &c.; wherefore, &c. if, &c. J. MORGAN.

Replication, that the promiſes were for neceſſaries.

WILLIAMS *againſt* STEVENSON. } And ſaid plaintiff, as to ſaid plea of ſaid defendant, by him laſtly above pleaded in bar, ſaith, that he, by any thing by ſaid defendant in his ſame plea alledged, ought not to be barred from having and maintaining his aforeſaid action againſt defendant, becauſe proteſting that ſaid defendant, at the time of the making of the ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned, was of full age of twenty-one years, as ſaid defendant in his ſaid plea hath above alledged: Nevertheleſs, for replication in this behalf, ſaid plaintiff ſays, that ſaid goods, wares, and merchandizes ſold and delivered by ſaid plaintiff to ſaid defendant, and ſaid work and labour done and performed, and ſaid materials and neceſſary things found and provided by ſaid plaintiff for ſaid defendant, were neceſſary goods, wares, and merchandizes, work and labour, materials and things ſold and delivered, done, found, and provided by ſaid plaintiff for ſaid defendant, at his ſpecial inſtance and requeſt, and ſuitable to his eſtate and degree; and that ſaid money in ſaid declaration mentioned to have been paid, laid out, and expended by ſaid plaintiff for the ſaid defendant, was ſo paid, laid out, and expended for buying and providing for ſaid defendant at his ſpecial inſtance and requeſt, things neceſſary for ſaid defendant, and ſuitable to his eſtate and degree, that is to ſay, at, &c. aforeſaid; and this, &c.; wherefore, &c. his damages by him ſuſtained by reaſon of the non-performance of ſaid ſeveral promiſes

and undertaking in ſaid declaration mentioned to be adjudged to him, &c.

Rejoinder, that promiſes, &c. were not for neceſſaries.

STEVENSON *at the ſuit of* WILLIAMS. } And ſaid defendant, as to ſaid plea by him above pleaded, by way of reply to ſaid plea of ſaid defendant by him above pleaded in bar, ſays, that ſaid goods, wares, and merchandizes ſold and delivered by ſaid plaintiff to ſaid defendant, and ſaid work and labour done and performed, and ſaid materials and neceſſary things found and provided by ſaid plaintiff for ſaid defendant, were not neceſſary goods, wares, merchandizes, work and labour, materials and things ſold, delivered, done, found, and provided by ſaid plaintiff for ſaid defendant, and ſuitable to his ſaid defendant's eſtate and degree; and that ſaid money in ſaid declaration mentioned to have been paid, laid out, and expended by ſaid plaintiff to and for the uſe of the ſaid defendant, was not money paid, laid out, and expended by ſaid plaintiff, for the buying and providing for ſaid defendant's things neceſſary for ſaid defendant ſuitable to his eſtate and degree, as ſaid plaintiff hath above in his ſaid plea pleaded, by way of reply in that behalf alledged; and of this he puts himſelf upon the country, &c. J. MORGAN.

Nol. pros. to ſome Counts; replication to others. To plea of infancy, providing neceſſaries ſuitable for defendant's degree.

COURT *againſt* OSBORN. } AND the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by him above pleaded in bar, ſaith, that as he cannot deny the ſaid plea of the ſaid defendant, he will not any further proſecute his bill in this preſent action or ſuit, as to the two laſt Counts thereof but as to the ſeveral other Counts of the ſaid bill or declaration, he the ſaid plaintiff ſays, that he ought not, by reaſon of any thing by the ſaid defendant in that plea alledged, to be barred from having and maintaining his aforeſaid action in reſpect of ſuch premiſes againſt him the ſaid defendant, becauſe he the ſaid plaintiff ſays, that the work and labour, care and diligence, in the firſt and ſecond Counts of the ſaid declaration of him the ſaid plaintiff mentioned, was neceſſary work and labour, care and diligence, done, performed, and beſtowed by him the ſaid plaintiff for the ſaid defendant, at his ſpecial inſtance and requeſt, and ſuitable to his eſtate and degree, and that the money mentioned in the third Count of the declaration was money laid out, expended, and paid by the ſaid plaintiff in the buying and providing for him the ſaid defendant, and at his like inſtance and requeſt, things neceſſary for the ſaid defendant, and ſuitable to his eſtate and degree, to wit, at, &c. aforeſaid; and this the ſaid plaintiff is ready to verify: wherefore he prays judgment, and his damages on occaſion of the non-performance of the ſaid promiſes and undertakings in the ſaid three firſt Counts of his aforeſaid declaration mentioned to be adjudged to him, &c. V. LAWES.

HAMMOND'

HAMMOND and another *againſt* SMITH, the younger. } AND ſaid plaintiffs, as to ſaid plea of ſaid defendant by him above pleaded in bar, ſays, *precludi non*, becauſe they ſay, that though true it is that ſaid defendant, at the time of the making of ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned, was within the age of twenty-one years, as ſaid defendant hath above in pleading alledged: Yet ſaid plaintiffs in fact further ſay, that ſaid defendant hath, ſince the making of ſaid promiſes and undertakings, attained the age of twenty-one years, to wit, at, &c. aforeſaid; and that after ſaid defendant had attained to his ſaid age of twenty-one years, and before the exhibiting the bill of ſaid plaintiffs againſt ſaid defendant, to wit, on, &c. at, &c. aforeſaid, he ſaid defendant agreed to and confirmed ſaid ſeveral promiſes and undertakings of him ſaid defendant in ſaid declaration mentioned, and each and every of them; and this, &c.; wherefore they pray judgment, and their damages by them ſuſtained by reaſon of the not performing of ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned, to be adjudged to them, &c. V. LAWES.

Replication to a plea of infancy, that defendant confirmed the promiſe at full age. Vide 1. Stra. 690. 1. T. R. 648.

See rejoinder to like replication, ante, 99.

AND now at this day, that is to ſay, on Wedneſday next after fifteen days from the day of Eaſter in this ſame term, until which day the ſaid Julius had leave to imparl to the ſaid bill, and then to anſwer the ſame, &c. as well the ſaid William by his ſaid attorney, as the ſaid Julius by Chriſtopher H the younger, his attorney, do come before our lord the king at Weſtminſter, and the ſaid Julius defends the wrong and injury, when, &c. and ſaith, that he did not undertake and promiſe in manner and form as the ſaid William hath above thereof complained againſt him, and of this he puts himſelf upon his country; and the ſaid William doth the like, &c; and for further plea in this behalf, the ſaid Julius, by leave of the court here to him for this purpoſe granted, according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid William ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſays, that he the ſaid Julius, at the time of the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and each and every of them, was within the age of twenty-one years, to wit, of the age of nineteen years and no more; and this he the ſaid Julius is ready to verify: therefore he prays judgment if the ſaid William ought to have or maintain his aforeſaid action thereof againſt him, &c. W. BALDWIN.

Plea of infancy.

JANE WODYEAR *againſt* WM. GRAHAM, eſq. } DECLARATION for board and lodging, neceſſaries found, goods ſold; money paid, lent, had and received; account ſtated; breach. Plea, Infancy. Replication, neceſſaries,

(*See* next page.)

Replication as to ſome Counts, neceſſaries for board and lodging, and to the reſt, *nol. pros.*

And the ſaid Jane, as to the ſaid plea of the ſaid William by him above pleaded in bar, as to the firſt, ſecond, third, and fourth Counts in the ſaid declaration mentioned ſays, [*precludi non*], becauſe ſhe ſays, that the ſaid thirty pounds in the ſaid firſt Count of the ſaid declaration mentioned, was for the neceſſary board, lodging, and maintenance of the ſaid William, his degree requiring the ſame, before that time found and provided by the ſaid Jane for the ſaid William, at his ſpecial inſtance and requeſt; and that the ſaid ſum of thirty pounds in the ſecond Count of the ſaid declaration mentioned, was for the neceſſary board, lodging, and maintenance of the ſaid William, his degree requiring the ſame, before that time found and provided by the ſaid Jane for the ſaid William, at his like ſpecial inſtance and requeſt; and that the ſaid ſum of thirty pounds, in the ſaid third Count of the ſaid declaration mentioned, was for neceſſary victuals and food by the ſaid Jane before that time ſold and delivered by the ſaid Jane to the ſaid William, his degree requiring the ſame, at his like ſpecial inſtance and requeſt; and that the ſaid ſum of thirty pounds in the ſaid 4th Count of the ſaid declaration mentioned, was for other neceſſary food and victuals by the ſaid Jane before that time ſold and delivered to the ſaid William at his like ſpecial inſtance and requeſt, his degree requiring the ſame; and this ſhe is ready to verify: wherefore ſhe prays judgment and her damages, by reaſon of the non-performance of the ſaid promiſes and undertakings in the ſaid firſt, ſecond, third, and fourth Counts of the ſaid declaration to be adjudged to her; and as to the ſaid plea of the ſaid William by him above pleaded in bar, as to the fifth, ſixth, ſeventh, and laſt Counts of the ſaid declaration, the ſaid Jane admits the ſame to be true, and will not further proſecute the ſaid William thereon; therefore, as to thoſe Counts, let the ſaid William be acquit, and go thereof without day.

W. CALDECOTT.

STATUTES OF FRAUD.

REID *againſt* NASH. } DECLARATION ſpecial *aſſumpſit*, in conſideration that ſaid plaintiff would not proceed to trial in a certain cauſe then at iſſue between plaintiff and one R. J. defendant undertook to pay plaintiff the ſum of fifty pounds with his coſts, to be taxed for the declaration in this cauſe *againſt* A. B.

Plea of Statute of Frauds, 29. Car. 2. 3.)

NASH, *at the ſuit of* READ. } *Non aſſumpſit.* 2d, by leave, &c. *actio non*, becauſe he ſays, that long before the making of the promiſe and undertaking in the ſaid declaration mentioned, that is to ſay, by a certain act of parliament

ment begun and holden at Weſtminſter in the county of Middleſex on the eighth of May 1671, and from thence continued by ſeveral prorogations to fifteenth of Febuary 1676, entituled, "An Act for Prevention of Frauds and Perjuries;" it was and is amongſt other things enacted, that from and after the twenty-fourth day of June A. D. 1677, no action ſhould be brought whereby to charge any executor or adminiſtrator upon any ſpecial promiſe, to anſwer damages out of his own eſtate, or whereby to charge the defendant, on any ſpecial promiſe, to anſwer the debt, default, or miſcarriage of another perſon, or to charge any perſon upon an agreement, upon conſideration of marriage, or upon any contract for ſale of lands, tenements, hereditaments, or any intereſts in or concerning them, or upon any agreement that was not to be performed for the ſpace of one year from the making thereof, unleſs the agreement upon which ſuch action ſhould be brought, or ſome memorandum or note thereof ſhould be written, and ſigned by the party to be charged therewith, or ſome other perſon thereunto by him lawfully authorized, as by the ſaid Act amongſt other things more fully appears: And the ſaid defendant further ſays, that the ſaid plaintiff hath exhibited his bill, and brought his ſaid action againſt him the ſaid defendant, upon the promiſes and undertakings in the ſaid declaration mentioned, for the default of the ſaid Robert Johnſon in the ſaid declaration mentioned, and for no other purpoſe whatſoever; and there is not now, nor ever was, any agreement in writing touching the promiſes and undertakings of the ſaid defendant in the ſaid declaration mentioned, or any of them, nor is there, or ever was, any memorandum or note of them, or any of them, ſigned either by the ſaid defendant or any other perſon thereunto by him lawfully authorized; and this, &c.; wherefore, &c. if, &c.

J. FORD.

To the above plea Mr. Warren drew a general demurrer, and on a ſecond argument judgment was given for plaintiff, the court of B. R. being unanimouſly of opinion, that the promiſe was out of the ſtatute, becauſe of the new conſideration of ſtaying a ſuit begun, and particularly of withdrawing a record.

STATUTES OF GAMING.

FOSTER *at the ſuit of* WEBB. } AS to the ſecond, third, and fourth promiſes, &c. (*non aſſumpſit*), and alſo to the firſt, &c. *actio non*, becauſe he ſaith, that after the firſt day of May A. D. 1711, and before the making of the ſaid promiſſory note in the ſaid declaration mentioned, to wit, on the ſaid, &c. in the ſaid declaration mentioned, at, &c. aforeſaid, the ſaid defendant and the ſaid P. A in the ſaid declaration mentioned, played together at a game or play commonly called or known

The ſtat. of gaming, 9. Ann. c. 14. to an action on an indorſed note, that plaintiff and defendant played at cards.

known by the name of, &c. for divers ſums of money upon tick and credit, and not for ready money; and that the ſaid defendant, and P. A. ſo playing at the ſaid game or play with cards called, &c. he the ſaid defendant then and there, at one and the ſame time and ſitting, loſt to the ſaid P. A. and the ſaid P. A. at the ſaid one time and ſitting, won of the ſaid defendant divers ſums of money, in the whole amounting to a ſum of money far exceeding the ſum of ten pounds, to wit, the ſum of, &c. whereof not any part was then and there paid to the ſaid P. A.; and thereupon the ſaid defendant afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, made his certain note in writing, commonly called a promiſſory note, his own proper hand being thereto ſubſcribed, bearing date the day and year laſt aforeſaid; by which ſaid note the ſaid defendant promiſed to pay to the ſaid P. A. by the name of, &c. or order, the ſum of, &c. ſix months after date of the ſaid note, for value received by him the ſaid defendant, and then and there delivered the ſaid note to the ſaid P. A. for the payment of the money aforeſaid, to wit, of the ſaid pounds ſo loſt by the ſaid defendant at the ſaid game or play with cards, and ſo won by the ſaid P. A. of the ſaid defendant at the ſaid game or play with cards at the ſaid one time and ſitting, and which ſaid note is the very ſame identical note in the ſaid firſt Count of the ſaid declaration mentioned and ſet forth, and not another or different note, and that by means of the premiſes, and by force of the ſtatute in ſuch caſe made and provided, the ſaid note was and is wholly void, and of no force and effect in the law; and this, &c.; wherefore, &c.

G. NARES.

Replication, that the note is given for money, *bona fide* lent and ſaves the gaming conſideration.

(*Precludi non*), becauſe proteſting as to the ſufficiency of the plea; proteſting alſo, that the ſaid P. A. in the ſaid plea mentioned, and the ſaid defendant did not play together at the ſaid game, or play with cards called, &c. as the ſaid defendant hath in his ſaid plea above alledged; proteſting alſo, that the ſaid defendant did not loſe to the ſaid P. A. or the ſaid P. A. win of the ſaid defendant, at the ſaid game or play, any money whatſoever, as the ſaid defendant hath in his ſaid plea above alledged, for replication in this behalf the ſaid plaintiff ſaith, that the ſaid defendant, on the day and year in the ſaid declaration in that behalf made and delivered the ſaid note, in the ſaid declaration mentioned, to the ſaid P. A. for ſecuring the payment of the ſaid ſum of pounds at the time of the making of the ſaid note, really and *bona fide* due and owing from the ſaid defendant to the ſaid P. A. for money by the ſaid P. A. before that time lent and advanced to the ſaid defendant; without this, that the ſaid defendant made or delivered the ſaid note to the ſaid P. A. for the payment of money loſt by the ſaid defendant at the ſaid game or play with cards, or for money won by the ſaid plaintiff of the ſaid defendant at the ſaid game or play with cards, as the ſaid defendant hath above

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in pleading alledged; and this he is ready to verify: wherefore he prays judgment, and his damage by him ſuſtained on occaſion of the not performing of the ſeveral promiſes and undertakings, and to be adjudged to him, &c. JA. HEWITT.

Rejoinder, taking iſſue on traverſe.

And ſaid defendant, as to ſaid plea of ſaid plaintiff by him above pleaded, in reply to ſaid plea of ſaid defendant by him above pleaded in bar as to ſaid firſt promiſe, &c. ſays, that ſaid plaintiff, by reaſon of any thing in his ſaid plea ſo pleaded in reply, contained, *actio non*, becauſe proteſting that ſaid defendant did not, on the day and year in ſaid declaration mentioned, in that behalf mentioned, or at any time make and deliver ſaid note in ſaid declaration mentioned, to ſaid P. A. for ſecuring the payment of pounds, at the time of the making of ſaid note, really and *bona fide* due and owing from ſaid defendant to ſaid plaintiff, for money by the ſaid P. A. before that time lent and advanced to ſaid defendant in manner and form as ſaid plaintiff hath in his replication aforeſaid alledged, for rejoinder in this behalf ſaid defendant ſaith, as before, that he did deliver ſaid note to ſaid P. A. for the payment of money loſt by ſaid defendant to ſaid P. A. and won by ſaid plaintiff of ſaid defendant at ſaid game or play with cards, in manner and form as ſaid defendant hath above in his ſaid plea in that behalf alledged; and of this he puts himſelf upon the country, &c.

STATUTES OF USURY.

MACHIN *againſt* BREADEY.

Plea of ſtat. of uſury, 12. Ann. ſt. 2. c. 10. to an action on a promiſſory note at the ſuit payee *v.* drawer; Smith *v.* Dove, Doug. 412.

AND the ſaid defendant, by his attorney, comes and defends the wrong and injury, when, &c.; and as to the promiſe and undertaking in the firſt Count of the declaration mentioned, and thereto alledged to have been made by him the ſaid defendant, and alſo as to the ſaid promiſes and undertakings in the ſecond Count of the ſaid declaration mentioned, and thereby alledged to have been made by the ſaid defendant, he the ſaid defendant ſays, that the ſaid plaintiff ought not to have or maintain her aforeſaid action in reſpect to ſuch promiſes and undertakings againſt him the ſaid defendant, becauſe he ſays, that the ſaid promiſſory note in the ſaid firſt Count, and the ſaid promiſſory note in the ſaid ſecond Count of the aforeſaid declaration mentioned, are one and the ſame promiſſory note, and not divers or different; and that after the twenty-ninth of September A. D. 1714, and before the making of the ſaid promiſſory note, to wit, on the fourteenth day of October A. D. 1779, at London, &c. aforeſaid, it was corruptly, and againſt

againſt the form of the ſtatute in ſuch caſe made and provided, agreed by and between the ſaid defendant and the ſaid plaintiff, that the ſaid plaintiff ſhould, on that day, lend to the ſaid defendant the ſum of five pounds five ſhillings of lawful money of Great Britain, to be repaid by him the ſaid defendant at the end of ſix months then next following, or ſooner, in caſe the ſame or any part thereof ſhould be wanted; and that the ſaid plaintiff ſhould forbear, and give to the ſaid defendant, time and day of payment of the ſaid ſum of five pounds five ſhillings ſo to be lent as aforeſaid, until and for the time afterwards; and that, beſides lawful intereſt from the day of the lending of the ſaid ſum of five pounds five ſhillings to him the ſaid defendant until the repayment thereof, the ſaid defendant ſhould, for the ſaid forbearing and giving time and day of payment of the ſaid ſum of five pounds five ſhillings, until and for the time aforeſaid, alſo give and pay to the ſaid Ann, that is to ſay, at the time of her lending the ſaid ſum of five pounds five ſhillings ſo to be lent as aforeſaid, the ſum of five ſhillings of lawful, &c.; and that, for ſecuring the payment by the ſaid defendant of the ſaid ſum of five pounds and five ſhillings ſo to be lent as aforeſaid, with the aforeſaid lawful intereſt for the ſame, he the ſaid defendant ſhould, at the time of the lending of the ſaid five pounds five ſhillings to him the ſaid defendant as aforeſaid, make and give to her the ſaid plaintiff his promiſſory note in writing, bearing date the fourteenth day of October in the year 1779 aforeſaid and then thereby promiſe to pay to her the ſaid plaintiff or bearer, at ſix months after the date of the ſaid note, or ſooner, if any ſhould be wanted, the ſaid ſum of five pounds five ſhillings ſo to be lent as aforeſaid, with lawful intereſt for ſuch ſum: And the ſaid defendant in fact further ſaith, that the ſaid plaintiff, in purſuance of the ſaid corrupt agreement after the making thereof, to wit, on the ſaid fourteenth day of October in the year 1779 aforeſaid, at London, &c. aforeſaid, lent to the ſaid defendant the ſaid ſum of five pounds five ſhillings of lawful money of Great Britain, ſo agreed to be lent to him as aforeſaid, to be repaid by him the ſaid defendant at the end of ſix months then next following or ſooner, in caſe the ſame, or any part thereof, ſhould be wanted: and the ſaid plaintiff did then and there forbear and give to the ſaid defendant time and day of payment of the ſaid ſum of five pounds five ſhillings ſo by her lent as aforeſaid, until and for the time aforeſaid; and he the ſaid defendant did then and there, that is to ſay, at the time of ſaid lending of the ſaid five pounds five ſhillings, and in purſuance of the aforeſaid corrupt agreement, give and pay to the ſaid plaintiff the ſaid ſum of five ſhillings of lawful, &c. ſo by him agreed to be given and paid to the ſaid plaintiff as aforeſaid which the ſaid plaintiff then and there took, accepted, and received, of and from him the ſaid defendant, under and in purſuance of the aforeſaid corrupt agreement, and he the ſaid plaintiff did then and there, at the time of the ſaid lending of the ſaid five pounds five ſhillings

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to him the ſaid defendant as aforeſaid, and further ſecuring the payment of the ſaid ſum of money by him the ſaid defendant ſo lent to him by the ſaid plaintiff as aforeſaid, with the ſaid lawful intereſt ſo agreed to be given and paid by him the ſaid defendant as aforeſaid, make and give to her the ſaid plaintiff his the ſaid defendant's promiſſory note in writing, bearing date the ſaid fourteenth day of October in the year 1779, and did thereby promiſe to pay her the ſaid plaintiff or bearer, at ſix months after the date of the ſaid note, or ſooner, if any ſhould be wanted, the ſaid ſum of five pounds five ſhillings, ſo by her lent to him the ſaid defendant as aforeſaid, with lawful intereſt for ſuch ſum; which ſaid promiſſory note ſhe the ſaid plaintiff then and there took, accepted, and received from him the ſaid defendant for the cauſe and purpoſe aforeſaid, and according to, and under and in purſuance of the aforeſaid corrupt agreement; and the ſaid defendant avers, that the ſaid promiſſory note ſo by him made and given under the aforeſaid corrupt agreement as aforeſaid, and the aforeſaid promiſſory note in the firſt and ſecond Counts of the ſaid declaration mentioned are one and the ſame promiſſory note, and that ſaid ſum of five ſhillings ſo by him paid and given to the ſaid plaintiff, and the ſaid intereſt recovered and made payable by the aforeſaid promiſſory note of him the ſaid defendant, exceeds the rate of five pounds for the forbearing of one hundred pounds for one year, contrary to the form of the ſtatute in ſuch caſe made and provided; and this he is ready to verify: wherefore he prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action in this reſpect to the ſaid promiſes and undertakings in the ſaid firſt and ſecond Counts in the ſaid declaration mentioned, and thereby alledged to have been made by him the ſaid plaintiff againſt him the ſaid defendant; and as to the third, fourth, and fifth Counts of the ſaid declaration, he the ſaid defendant ſays, that he did not undertake or promiſe in manner and form as the ſaid plaintiff hath in thoſe Counts complained againſt him; and of this he puts himſelf upon the country, &c.

Non aſſumpſit 3d, 4th, and 5th Counts.

If the defendant means to defend this action, he had better plead the general iſſue only, as the ſmalleſt variation in evidence will otherwiſe deprive him of his defence.

V. LAWES.

AND the ſaid defendant, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and as to the promiſe and undertaking in the firſt Count of the declaration mentioned, ſays, that the ſaid plaintiff ought not to have or maintain his aforeſaid action in reſpect of ſuch promiſe and undertaking againſt her; becauſe ſhe ſays, that after the making of the ſaid bill of exchange in the ſaid firſt Count of the declaration mentioned, to wit, on, &c. at, &c. it was corruptly and againſt the form of the ſtatute in ſuch caſe made and provided, agreed by and between the ſaid plaintiff and the ſaid defendant, that the ſaid plaintiff

Statute of Uſes 12 Ann ſt. 1. c. 16. pleaded, an act on an indorſed bill, the ſuit of the indorſee againſt the indorſer.

plaintiff ſhould lend and advance to her the ſaid defendant the ſum of pounds, and that the ſaid plaintiff ſhould give day of payment thereof to the ſaid defendant, until and upon, &c. and that the ſaid defendant, for the loan of the ſaid pounds, and for the giving payment thereof until and for the time aforeſaid, ſhould, at the time of the lending of the ſaid pounds by the ſaid plaintiff to the ſaid defendant, give and pay to the ſaid plaintiff the ſum of pounds, and that for ſecuring to the ſaid plaintiff the payment of the ſaid pounds on, &c. the ſaid defendant ſhould, at the time of the lending of the ſaid pounds by the ſaid plaintiff to the ſaid defendant in manner aforeſaid, indorſe and deliver to the ſaid plaintiff the ſaid bill of exchange in the ſaid firſt Count of the ſaid declaration mentioned, for the ſaid plaintiff to receive the money therein mentioned when the ſame ſhould become due: *And* the ſaid defendant further ſaith, that after the making of the ſaid agreement, to wit, on, &c. at, &c. aforeſaid, the ſaid plaintiff, in purſuance of the ſaid agreement, did lend and advance to the ſaid plaintiff the ſaid ſum of pounds ſo agreed to be lent to her as aforeſaid, and that the ſaid defendant did then and there give and pay to the ſaid plaintiff the ſaid ſum of pounds, ſo as aforeſaid agreed to be given and paid by the ſaid defendant to the ſaid plaintiff for the forbearing and giving day of payment of the ſaid pounds ſo by the ſaid plaintiff lent and advanced to the ſaid defendant as aforeſaid, and did alſo, in completion of the ſaid agreement, then and there indorſe and deliver to the ſaid plaintiff the ſaid bill of exchange in the ſaid firſt Count of the ſaid declaration mentioned, for the purpoſe in that behalf before-mentioned, and the ſaid plaintiff then and there accepted, had, and received the ſaid bill, and alſo the aforeſaid pounds of and from the ſaid defendant for the purpoſe aforeſaid: And the ſaid defendant further ſaith, that the ſaid ſum of pounds ſo by her given and paid to the ſaid plaintiff on the occaſion, and in manner and for the purpoſe aforeſaid, exceeded the rate of five pounds for the forbearing and giving day of payment of one hundred pounds for one year, againſt the form of the ſtatute in ſuch caſe made and provided, and that the ſaid indorſement of the ſaid bill of exchange in this plea, and the indorſement thereof in the ſaid firſt Count of the ſaid declaration mentioned, are one and the ſame, and not divers or different; and this the defendant is ready to verify; wherefore ſhe prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action in reſpect to the firſt promiſe and undertaking in the ſaid declaration mentioned.

V. LAWES.

Replication that the conſideration was *bona fide*, and traverſes the uſury. Haynham v. Mathews, 2. Stra. 1192. Smith v Glover, Dougl.

And the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by her above pleaded in bar, as to the promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, ſays, that notwithſtanding any thing in that plea alledged, he ought to be barred from having and maintaining his aforeſaid action in reſpect to ſuch promiſe and undertaking againſt her the ſaid defendant

fendant, becauſe he ſaith, that the aforeſaid indorſement of the ſaid bill of exchange in the ſaid firſt Count of the ſaid declaration mentioned, was made by her the ſaid defendant, to him the ſaid plaintiff, upon a *bona fide* and good and valuable conſideration, to wit, at Weſtminſter aforeſaid, without this, that it was agreed by and between him the ſaid defendant, and the ſaid plaintiff, in manner and form as the ſaid defendant hath above in her ſaid plea firſt above pleaded alledged, and this he the ſaid plaintiff is ready to verify, wherefore he prays judgment in reſpect to the ſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, together with damages by him ſuſtained, on occaſion of ſuch promiſes to be adjudged to him, &c.

V. GIBBS.

That in ſuch replication it is ſufficient to traverſe the agreement generally, without making uſe of the word corruptly, that being only a concluſion of law upon the facts. Vide *Ann.* 287.

AND the ſaid Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the ſum of thirteen pounds, parcel of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, ſays, that he cannot deny the ſaid action of the ſaid John in that reſpect, nor but that he the ſaid Richard did undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him, nor but the ſaid John hath ſuſtained damage by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned as to the ſaid ſum of thirteen pounds, that is to ſay, to the amount thereof, over and above his coſts and charges by him about his ſuit in that behalf expended: and as to the reſidue of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, the ſaid Richard ſays, that he did not undertake and promiſe in manner and form as the ſaid Richard hath above thereof complained againſt him, and of this he puts himſelf upon the country, &c. and the ſaid John doth the like, and inaſmuch as the ſaid Richard hath not denied the ſaid action of the ſaid John, as to the ſum of thirteen pounds, part of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, but admits the ſame to be true, and that the ſaid John hath ſuſtained damage on occaſion of the non-performance of the ſaid promiſes and undertakings in the ſaid declaration mentioned, as to that money to the amount thereof, that is to ſay, to thirteen pounds, over and above his coſts and charges, in that behalf the ſaid John prays judgment for thoſe damages over and above his coſts and charges; therefore it is conſidered that the ſaid John do recover ſuch damages againſt the ſaid Richard, over and above his coſts and charges

Confeſſion the action as part, and *aſſumpſit* as the reſidue, judgment as the part ſeſſed.

charges in that behalf, but becauſe it is convenient that there be but one taxation of damages in this ſuit, therefore let all further proceedings, as to the damages and coſts, ſtay until after the trial of the ſaid iſſue above joined between the parties, and to try the ſaid iſſue ſo joined between the ſaid parties, the ſheriff is commanded that he cauſe to come here in twelve, &c. by whom, &c. who neither, &c. to recognize, &c. becauſe as well, &c.

V. LAWES.

(a) Plea to declaration by curate againſt rector. 1ſt, *Non aſſumpſit*, 2d plea, that the plaintiff [illegible] ſubſcribe [illegible] declaration [illegible] required by 13. & 14. C. 2. 3d plea, that plaintiff did not procure a certificate under the hand of the biſhop, and read the ſame in the church as required by the ſaid above-mentioned.

AND now at this day, that is to ſay, on Tueſday after eight days of St. Hilary in this ſame term, until which day the ſaid Peter had leave to imparle to the ſaid bill, and then to anſwer the ſame, &c. as well the ſaid George, by his ſaid attorney, as the ſaid Peter, by W. B. his attorney, do come before our lord the king, [illegible] miniſter, and the ſaid Peter comes and defends the wrong [illegible] jury, when, &c. and ſays, that he did not undertake, or promiſe in manner and form as the ſaid George hath above thereof complained againſt him, and of this he puts himſelf upon the country, and the ſaid George doth the like: and for a further plea in this behalf, as to the ſeveral promiſes and undertakings in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned, the ſaid Peter, by leave of the court for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid George ought not to have his aforeſaid action maintained againſt him, becauſe he ſays, that the ſaid office of curate, in the ſaid firſt Count of the ſaid declaration mentioned, and the ſaid office of curate in the ſaid ſecond Count of the ſaid declaration mentioned, and the ſaid office of curate in the ſaid third Count of the ſaid declaration mentioned, are one and the ſame, and not other or different offices: and the ſaid Peter in fact further ſaith, that the ſaid George did not at, or before his taking poſſeſſion of the ſaid office, ſubſcribe the declaration or acknowledgement of conformity in the behalf required, in and by a certain act of parliament made and paſſed in the thirteenth and fourteenth years of the reign of his late majeſty king Charles the Second, intituled, "An act for the uniformity of public prayers, and adminiſtration of the ſacrament, and other rites and ceremonies, and for the eſtabliſhing the form of making, ordaining, and conſecrating biſhops, prieſts, and deacons in the church of England," according to the form and effect of a certain act of parliament, but failed therein, to wit, at, &c. whereby, and by force of the ſaid act of parliament, the ſaid George loſt and forfeited the ſaid office of curate, and became and was utterly diſabled and *ipſo facto* deprived of the ſame; for which reaſon he the ſaid Peter at and during the ſaid time, when, &c. did prevent and hinder the ſaid George from officiating in the ſaid office, as

(a) See the declaration, Vol. III. 68.

he

he lawfully might for the cauſe aforeſaid, and did not pay to him the ſaid George the ſaid yearly ſum of fifty pounds, in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned, whereof the ſaid George hath above complained againſt him the ſaid Peter, and this he the ſaid Peter is ready to verify, wherefore he prays judgment if the ſaid George ought to have his aforeſaid action thereof maintained againſt him: And for a further plea in this behalf. as to the ſaid ſeveral promiſes and undertakings in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned, the ſaid Peter by like leave, &c. according to the form, &c. ſays, that the ſaid George ought not to have, &c. becauſe he ſays, that the ſaid office of curate in the ſaid firſt Count of the ſaid declaration mentioned, and the ſaid office of curate in the ſaid ſecond Count in the ſaid declaration mentioned, and the ſaid office of curate in the ſaid third Count of the ſaid declaration mentioned, are one and the ſame office, and not other or different offices: And the ſaid Peter in fact further ſaith, that the ſaid George did not procure a certificate under the hand and ſeal of the ſaid archbiſhop, biſhop, or ordinary of the dioceſe wherein he the ſaid George was and officiated as curate of the ſaid united pariſhes, that is to ſay, a certificate of the ſubſcription by him the ſaid George of the ſaid declaration or acknowledgment of conformity, in that behalf required in and by the ſaid act of parliament, nor did publicly and openly read the ſame, together with the ſaid declaration or acknowledgment aforeſaid, upon any Lord's day within three months following, ſuch ſubſcription in the church of the ſaid united pariſhes where he the ſaid George ſo officiated as aforeſaid, in the preſence of the congregation there aſſembled in the time of divine ſervice, according to the form, &c. of the ſaid act of parliament, but failed therein, to wit, at, &c. whereby, and by force of the ſaid act of parliament, the ſaid George loſt the ſaid office of curate, and became and was utterly diſabled and *ipſo facto* deprived of the ſame, for which reaſon he the ſaid Peter at and during the ſaid time, when, &c. (being after the expiration of the ſaid three months) did prevent and hinder the ſaid George from officiating in the ſaid office as he lawfully might for the cauſe aforeſaid, and did not pay to him the ſaid George the ſaid yearly ſum of fifty pounds in the ſaid firſt, ſecond and third Counts of the ſaid declaration mentioned, whereof the ſaid George hath above complained againſt him the ſaid Peter, and this he the ſaid Peter is ready to verify, wherefore he prays judgment, if the ſaid George ought to have his aforeſaid action thereof maintained againſt him, &c.

2d plea.

2d plea.

SAMUEL SHEPHERD.

And

Replication. And the ſaid George as to the ſaid plea of the ſaid Peter, by him ſecondly above pleaded in bar, as to the ſeveral promiſes in the firſt, ſecond, and third Counts of the ſaid declaration mentioned, ſays, that the ſaid George ought not to be barred from having his aforeſaid action thereof maintained againſt him the ſaid Peter, becauſe he the ſaid George ſays, that though true it is that the ſaid office of curate in the ſaid firſt Count of the ſaid declaration mentioned, and the ſaid office of curate in the ſaid ſecond Count of the ſaid declaration mentioned, and the ſaid office in the ſaid third Count of the ſaid declaration mentioned, are one and the ſame office, and not other or different offices, as the ſaid Peter has above in his ſecond plea alledged: yet he the ſaid George in fact further ſaith, that he the ſaid George did, before his taking poſſeſſion of the ſaid office, to wit, on, &c. in, &c. ſubſcribe the declaration or acknowledgment of conformity in that behalf required in and by the ſaid act of parliament, in the ſaid ſecond plea of the ſaid Peter mentioned; and this he the ſaid George prays may be enquired of by the country: and the ſaid George, as to the ſaid plea of the ſaid Peter by him laſtly above pleaded in bar, as to the ſaid ſeveral promiſes and undertakings in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned, ſays, that he ought not to be barred from having his aforeſaid action thereof maintained againſt him the ſaid Peter, becauſe proteſting the ſaid plea ſo laſtly above pleaded, and the matters therein contained in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law to bar him the ſaid George from having and maintaining his ſaid action thereof againſt the ſaid Peter. For replication in this behalf the ſaid George ſaith, that though true it is, that the ſaid office of curate in the ſaid firſt Count, &c. ſecond Count, &c. and third Count, &c. are one and the ſame office, and not other or different offices, as the ſaid Peter hath above in his ſaid plea laſtly above pleaded alledged: yet the ſaid George in fact further ſaith, that he the ſaid George, before his taking poſſeſſion of the ſaid office, to wit, on, &c. in, &c. did procure himſelf to be duly licenſed by the biſhop of London, in whoſe dioceſe the ſaid church of the ſaid united pariſhes of St. M. and St. G. in the city of London was, and from thenceforth hitherto hath been, and ſtill is ready to perform the office of curate in the ſaid church, and did then and there, in due manner, ſubſcribe the declaration or acknowledgment of conformity by law in that behalf required, and did then and there procure a certificate under the hand and ſeal of the ſaid biſhop of London, of ſuch ſubſcription by him the ſaid George, of the ſaid declaration or acknowledgment of conformity, and the ſaid George in fact further ſaith, that having obtained ſuch licenſe as aforeſaid, from the ſaid biſhop of London, and having ſo ſubſcribed ſuch declaration or acknowledgment of conformity as aforeſaid, and having alſo obtained ſuch certificate thereof as aforeſaid, he the ſaid George afterwards, to wit, on, &c. did enter upon, and was received by the ſaid Peter into his ſaid office of a curate, in his the ſaid Peter's church of the aforeſaid united

pariſhes

pariſhes, and did continue to perform the ſaid office, and to officiate in the ſaid church until and upon the ſeventeenth day, &c. and that on that day, that is to ſay, on the ſaid ſeventeenth day, &c. the ſaid biſhop of London, upon a certain viſitation then and there by him made in and of his ſaid dioceſe, to wit, at London aforeſaid, in the ſaid pariſh of, &c. in due manner allowed of, and confirmed the ſaid licenſe ſo by him granted to the ſaid George as aforeſaid, and then and there aſſented to the ſaid George continuing in the poſſeſſion of, and officiating in his ſaid office of curate in the ſaid church of the ſaid united pariſhes, and he the ſaid George did thereupon continue, and by and with the aſſent and conſent of the ſaid Peter, was continued in the ſaid office from thence until he the ſaid Peter afterwards, and long before the expiration of three months from ſuch confirmation of the ſaid licenſe of the ſaid George as aforeſaid; and alſo before he the ſaid George could or was enabled to read the ſaid certificate of the ſaid biſhop of the ſaid ſubſcription by him the ſaid George of his aforeſaid declaration or acknowledgment of conformity, in the ſaid church of the ſaid united pariſhes, on ſome Lord's day, in the preſence of the congregation there aſſembled, in the time of divine ſervice, to wit, on, &c. in the ſaid declaration mentioned, of his own wrong prevented and hindered the ſaid George from any longer officiating in the ſaid church, and then and from thenceforth hitherto hath wholly excluded and kept him from and out of the ſaid church, and hindered and prevented him from officiating therein, as in the ſaid firſt, ſecond, and third Counts of the ſaid declaration is alledged, and thereby hindered and prevented him from reading in the ſame, the ſaid certificate of the ſaid biſhop of the ſaid ſubſcription by him the ſaid George of his ſaid declaration or acknowledgment of conformity, within the ſaid ſpace of three months then next following the ſaid confirmation of his ſaid licenſe, to perform the ſaid office of curate in the ſaid church, as he otherwiſe could, might, and would have done, and the ſaid George in fact further ſaith, that the ſaid Peter did not at any time whilſt the ſaid George ſo officiated and continued in his ſaid office of curate, in the ſaid church as aforeſaid, object to his ſo officiating in the ſame, upon the ground of his not having read the ſaid certificate of his ſaid ſubſcription of the ſaid declaration or acknowledgment of conformity, or on any other ground whatſoever, but during all that time aſſented to, and acquieſced in his ſo officiating in the ſaid church, and from time to time, and after the expiration of three months from his ſo ſubſcribing ſuch declaration or acknowledgment of conformity as aforeſaid, paid him the ſaid yearly ſum or ſalary of fifty pounds, in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned, to wit, at, &c.: and this he the ſaid George is ready to verify, wherefore he prays judgment, and his damages by him ſuſtained on occaſion of the premiſes in the ſaid firſt, ſecond, and third Counts mentioned, to be adjudged to him, &c. &c. V. LAWES.

See the following ſtatutes and authorities of the above replication, viz. the ſtatutes of 13. & 14. Car. II. c. 4. ſ. 8. 9, 10, 11, 12. ; 2. W & M ſ 1 c. 8. ſ. 11. ; 12. Ann. ſ. 2. c. 7. ; 2. Geo. II. c. 32. ſ. 8. ; and 23. Geo. II. c. 28. ſ. 1, ; and the caſes of Martyn v. Hind, Cowp. 437, and Dean, 447. Lewis v. Milburn, Cowp. 319. Powell v. Milbank in the notes of lo. 309. of Term Reports, Carver v. Pinkney, 3. Bgr. 82. and Monk v. Butler. 1 Roll Reports, 83.

This plea may be objected to upon the following grounds, viz. Firſt, for not ſtating a ſentence of deprivation, and as to that he is referred to the 16th ſect. of the ſtat of Car. . (which ſeems to recognize the neceſſity for ſuch a ſentence), and to the argument of Mr. Serjeant Glynn, in the caſe of Powell v. Milbank, together with Ayliff's Caſe Com. 309 Secondly, as the declaration of conformity in 9. ſ. of the ſtat. of Car is in part altered and abolished, not only by the 12. ſ. of the ſaid act, but by the ſubſequent ſtatute of 2 W. & M. in confining the declaration to the ſtat. of Car. merely without taking any notice of the others, that in part alter and abolish the declaration as required by that act ; and Thirdly, it is to be conſidered, whether the three months for reading the certificate ought not to be computed from the obtaining of ſuch *certificate*, and not from the *ſubſcription of the declaration* of conformity, and to have been ſo pleaded, for the ſubſcriptions may be at one time, and the certificates at another, not within three months from the ſubſcription of the declaration; and Fourthly, Whether as the third Count of the declaration is for the arrears of the ſalary merely, and does not expreſsly ſtate them to be ſuch as aroſe after the diſturbance of the plaintiff in his office, the plea founded on a diſability during ſuch diſturbance, ought not to have averred that no part of the ſalary claimed in the 3d Count, became due prior to ſuch diſturbance, for otherwiſe it may have become due previous to that period, and then it may be queſtioned whether ſubſequent deprivation be an anſwer to it, and whether, under the circumſtances ſtated, any advantage can now be taken from obtaining a certificate of a *ſubſequent* *indulgment* under ſtat. of 23. Geo. III.

And further, whether as the plaintiff, from the caſe of Powell v. Milburn, ſeems ſtill open to put the defendant as the proof of non conformity on the iſſue to the common Courts, is it, or is it not adviſeable to offer a replication upon the plea to the ſpecial Counts, or to abandon them, and reſt upon the Count for money had and received ? or whether it is better to demur to the plea, or whether it might not be worth while to hazard a general replication of *de injuria ſua propria abſque tali cauſa*, and under that replication (ſuppoſing an iſſue to be taken on it), contend that the defendant ſhould prove the *whole* of his plea, which he is incapable of doing, the plaintiff having, in fact, obtained his certificate of the declaration or acknowledgment.

I Have drawn a replication on the circumſtances of this caſe, rather with a view to the the facts than as a replication to be abided by. Indeed this caſe is ſo ſingularly new and awkward, that it is difficult to deviſe on what the replication ought to be ; on the whole, I am therefore more inclined in favour of a general one. V. Lawes.

OTHER PLEAS IN AVOIDANCE.

Plea in bar, that one of the plaintiffs was partner with the defendants, and therefore could not ſue.

AND the ſaid defendants by A. B. their attorney, come and defend their wrong and injury, when, &c. and ſay, that they did not undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt them, and of this they put themſelves upon the country, &c. and the ſaid plaintiffs do ſo likewiſe; and for further plea in this behalf, they the ſaid defendants by leave of, &c. according to, &c. ſay, *actio non*, becauſe they ſay, that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned (if any ſuch was or were made) were and each of them was made by them the ſaid defendants, together with the ſaid W. M. one of the plaintiffs in this cauſe, jointly, and not by them

them the said defendants separately, from and without the said W. M. to wit, at, &c. And this, &c. wherefore, &c. if, &c.

V. Gibbs.

Mr Wood signed a demurrer to this, but declining arguing it, the matter in dispute was upward of twenty thousand pounds, so that the action was barred.

Mr. Gibbs first drew a plea in abatement, but afterwards added this plea in bar.

[redacted]

Ist. Non assumpsit. But for further plea in this behalf, as to the said promise and undertaking, in the said declaration mentioned, he the said George, by leave of, &c. says, *actio non*, because he says, that before the time of the making of the said promissory note in the said declaration mentioned, that is to say, by a certain inquisition taken at the session of the peace of oyer and terminer, and general goal delivery of our said lord the king's goal at Newgate, in the city of Bristol, and county of the same city, on, &c. in the eighteenth year of the reign of our sovereign lord George the third, by the grace &c before J. D. mayor of the said city, J. D recorder of the said city, and M S esquire, one of the aldermen of the said city, and their fellows, justices of our said lord the king, assigned by virtue of certain letters patent of the lady Ann, late queen, &c under the great seal of Great Britain, bearing date at Westminster, the twenty fourth day of July, in the ninth year of the reign of the said late queen, granted and confirmed to the mayor, burgesses, and commonalty of the city aforesaid, and their successors, and by which said letters patent the said late queen willed, that the mayor, recorder, and aldermen of the city aforesaid for the time being, or any three or more of them (whereof the mayor and recorder of the said city for the time being to be two) should be such justices to enquire by the oaths of good and lawful men of the county of the said city of Bristol aforesaid, as well within the liberties as without, by whom the truth of the case might be the best known of all treasons, murders, ravishments of women, and other felonies whatsoever, as also of all trespasses and misdemeanors within the county, precinct, and liberties of the said city of Bristol, by whomsoever or howsoever done, perpetrated, and committed, and also all indictments whatsoever before the same justices of our said lord the king, or any other our late justices of our said lord the king, or any of them within the county of the city aforesaid, taken to hear and determine, and the goal of our said lord the king, of the county of the said city of Bristol, of the prisoners therein being to deliver, then and there sworn and charged to enquire as well for our said lord the king, as for the body of the said county of the said city of Bristol aforesaid: It was presented "that the said John, by the name and description of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. in, &c. upon one A. B. in the peace of

Plea (to the declaration on a promissory note indorsed v. the maker) that the plaintiff was tried at the sessions of oyer and terminer, and general goal delivery of Newgate, and sentenced to be hanged which judgement is in full force.

Indictment for murder.

God, and our ſaid lord the king being then and there feloniouſly, wilfully, and of his malice afore-thought, did make an aſſault: and that the ſaid John, a certain piſtol of the value of five ſhillings, then and there charged and loaded with gunpowder, and one leaden bullet, which ſaid piſtol ſo charged and loaded as aforeſaid, he the ſaid John in his right hand then and there had and held to againſt and upon the ſaid A. B. and then and there feloniouſly, wilfully, and of his malice afore-thought, did ſhoot and diſcharge: and that the ſaid John with the leaden bullet aforeſaid, out of the piſtol aforeſaid, then and there, by force of the gunpowder aforeſaid, ſhot, diſcharged, and ſent forth as aforeſaid, the ſaid John then and there feloniouſly, &c. did ſtrike, penetrate, and wound giving to the ſaid A. B then and there with the leaden bullet ſo as aforeſaid, ſhot, diſcharged, and ſent forth out of the piſtol aforeſaid, by the ſaid John, in and upon the left ſide of him the ſaid A. B. one mortal wound of the depth of four inches, and of the breadth of half an inch, of which ſaid mortal wound the ſaid A. B. then and there immediately languiſhed, and languiſhing then and there lived for three quarters of an hour, at the end of which ſaid three quarters of an hour, on, &c. at, &c. the ſaid A. B. of the mortal wound aforeſaid died; and alſo the jurors aforeſaid, upon their oath aforeſaid, did ſay, that the ſaid John then and there in manner and form aforeſaid, feloniouſly, &c. did kill and murder, againſt the peace of our ſaid lord the king, his crown and dignity," whereupon the ſheriffs of the ſame city and county of the ſame city were commanded that they ſhould omit not by reaſon of any liberty in their bailiwick, but that they ſhould take the ſaid John, if he might be found in their bailiwick, and him ſafely keep to anſwer our ſaid lord the king, concerning the felony and murder whereof he ſtood indicted: whereupon afterwards, to wit, at the ſame ſeſſion of peace of oyer and terminer, and general goal delivery of our ſaid lord the king's goal of Newgate aforeſaid, held as aforeſaid, on, &c. in the eighteenth year of the reign of our ſaid lord the king, came the ſaid John, under the cuſtody of C. D. and E. F. ſheriffs of the city aforeſaid, and county of the ſame city, in whoſe cuſtody in the ſaid goal of the ſaid lord the king, in the city aforeſaid, and county of the ſame city, for the cauſe aforeſaid, he had been duly committed, and being brought to the bar there in his proper perſon was committed to the cuſtody of the aforeſaid ſheriffs, &c. and forthwith of the premiſes aforeſaid, in the indictment aforeſaid above ſpecified and charged, being aſked in what manner he would acquit himſelf thereof, he the ſaid John ſaid, he was not guilty thereof, and concerning that for good and evil, he puts himſelf upon the country; and J. A. town-clerk of the ſaid city, and county of the ſame city, who for our ſaid lord the king proſecuted in that behalf, did ſo likewiſe; thereupon it was commanded that a jury ſhould thereupon there immediately come before the ſaid juſtices of the ſaid lord the king, by whom the truth of the matter might be better known, and who had no affinity to the ſaid John, to recognize upon their oath,

whether

whether the ſaid John was guilty of the ſaid felony and murder in the aforeſaid indictment mentioned, or not, becauſe as well the ſaid J. A. who proſecuted for our ſaid lord the king in that behalf, as the ſaid John, had put themſelves upon that jury, and the jurors of that jury by the ſaid ſheriffs for that purpoſe duly impannelled and returned, to wit, T. D. &c. being called, came; and being choſen, tried, and ſworn to ſpeak the truth of and concerning the premiſes in the ſaid indictment ſpecified, upon their oath ſaid, that the ſaid John was guilty of the ſaid felony and murder in the ſaid indictment above ſpecified, in manner and form as were therein charged againſt him, and that the ſaid John at the time of the committing of the ſaid felony and murder, or at any time ſince, had not any goods or chattels, lands or tenements, to the knowledge of the ſaid jurors; and upon that the ſaid John was aſked by the Court there, whether he had any thing to ſay for himſelf, why the Court ought not to proceed to judgment upon the ſaid verdict, who ſaid nothing, beſides what he had ſaid before ſaid, whereupon all and ſingular the premiſes being ſeen and underſtood by the Court there, it was conſidered by the Court there, that the ſaid John ſhould be hanged by the neck until he ſhould be dead, on Wedneſday the twenty-ninth of April, in the eighteenth &c. and that his body ſhould be afterwards delivered to R. S. ſurgeon, to be diſſected and anatomized; and the ſaid ſheriffs were commanded to take him, &c. to ſatisfy, &c. as by the record and proceedings thereof more fully appears: And the ſaid defendant further ſays, that the judgment aforeſaid, at the time of the making the ſaid promiſſory note in the ſaid firſt Count of the ſaid declaration mentioned, and alſo at the time of the making the ſaid indorſement thereon, in that Count mentioned, was in full force and effect, not reverſed, annulled, diſcharged, made void, or pardoned by our ſaid lord the king, to wit, at, &c. and the ſaid defendant avers, that the ſaid John in the ſaid record mentioned, and the ſaid John in the ſaid firſt Count of the ſaid declaration mentioned, are one and the ſame perſon, and not different, to wit, at, &c. and this, &c. wherefore he prays judgment, if the ſaid John, as to the ſaid promiſe and undertaking in the ſaid firſt Count mentioned, ought to have, or maintain his aforeſaid action thereof againſt him, &c.: And for further plea in this behalf, as to all the ſaid promiſes and undertakings in the ſaid declaration mentioned, the ſaid defendant by leave of, &c. ſays, *actio non*, becauſe he ſays, that the ſaid John, long before the exhibiting the bill of him the ſaid John, was, and ſtill is indebted to him the ſaid defendant, at, &c. in more money than at the time of exhibiting the bill of him the ſaid John, was, and now is due and owing from the ſaid defendant to the ſaid John, by reaſon of the non performance of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, to wit, in the ſum of one hundred pounds of, &c. upon and by virtue of a certain promiſſory note in writing, made and ſubſcribed by the ſaid John, and bearing date, &c. and delivered by the ſaid John to one C. D. to wit, at, &c. whereby the ſaid John, one

Set-off of a promiſſory note given to plaintiff, and indorſed to defendant.

month after date, promiſed to pay to the ſaid C. D. or order, the ſum of ten pounds, as value received, and which ſaid note, before the exhibiting of the bill of the ſaid John, had been duly indorſed by the ſaid C. D. to H. K. and by the ſaid H. K. to one W. D. and by the ſaid W. D. to the ſaid defendant, and which ſaid promiſſory note, at the time of exhibiting the bill to the ſaid John was, and ſtill is in full force: and alſo, &c. common articles of a ſet off, and common concluſion. G. Wood.

Replication to the laſt plea of *nul tiel* record.

And the ſaid John, as to the ſaid plea of the ſaid George, by him ſecondly above pleaded in bar, as to the ſaid promiſes and undertakings in the ſaid firſt Count of the ſaid declaration mentioned, ſays that, *præcludi non*, from having and maintaining his aforeſaid action to recover his damages againſt the ſaid George, by reaſon of the non performance of the ſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, becauſe he ſays, that there is not any ſuch record of the conviction and attainder of the ſaid John, as the ſaid George hath above in pleading alledged: And this, &c. wherefore, &c. and his damages, by reaſon of the non performance of the ſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, to be adjudged to him, &c. Illac on ſet off. S. Lawrence.

Rejoinder, *nul tiel* record, and prays *certiorari*.

And the ſaid George, as to the ſaid replication of the ſaid John, by him above made to the ſaid plea of the ſaid George, by him ſecondly above pleaded in bar, as to the ſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, ſaith, that there is no ſuch record of the conviction and attainder of the ſaid John, as the ſaid George hath above in pleading alledged; and this he is ready to verify by the record itſelf, now remaining in the cuſtody of the ſaid king's juſtices of over and terminer, and general goal delivery of the ſaid king's goal of Newgate, in and for the ſaid city of Briſtol, and county of the ſame city; and hereupon the ſaid George prays the king's writ of *certiorari* to be directed to the ſaid juſtices, to certify to the ſaid court of our ſaid lord the king, before the king himſelf, whether there be ſuch record of the conviction and attainder of the ſaid John, as the ſaid George hath above in pleading alledged or not, and it is granted returnable on , next after , next coming. G. Wood.

See *Continuation* Criminal Diviſion, poſt.

Declaration for work and labour, goods ſold, &c. Plea, 1ſt, *Non aſſumpſit*. 2d, that defendant entered into a deed of compoſition with his creditors, to pay a pound rate in hand, and the remainder in four years, they covenanting not to ſue within four years. See Heathcote v. Crookſhanks, 2. T. Rep. 24. Cockſhot and Bennett, 2. T. Rep. 763.

AND the ſaid Thomas Legall, by William Robert Duill his attorney, comes and defends the wrong and injury when, &c. and ſays, that he did not undertake or promiſe in manner and form as the ſaid Saward and Thomas Andrews, have above thereof complained againſt him the ſaid Thomas Legall; and of this he puts himſelf upon the country, &c.: And for further plea in this be-

half,

hall, the ſaid Thomas Legall, by leave of the Court here for that purpoſe firſt had and obtained, ſays, that the ſaid S. and T. A. ought not to have or maintain their aforeſaid action thereof againſt him, becauſe he the ſaid T. L. ſays, that before the ſaid W. G. became a bankrupt, and before the day of ſuing forth the original writ of the ſaid S. and T. againſt the ſaid T. L. in this behalf, to wit, on the ſeventeenth day of September, in the year of Our Lord 1788, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, by a certain indenture of five parts, then and there made by and between the ſaid T. L. by the name and deſcription of Thomas Legall Yates, of Bury, in the county of Hants, purſer of the Goliah ſhip of war, of the firſt part; one Richard Toulmin and one Oliver Toulmin (by the names and deſcriptions of Richard Toulmin and Oliver Toulmin, of Eſſex-ſtreet, in the Strand, in the county of Middleſex, eſquires) of the ſecond part; the ſeveral perſons creditors and aſſignees of creditors of the ſaid Thomas Legall Yates, whoſe names were there underwritten, of the third part; one Henry Papp (by the name and deſcription of Henry Papps, of Clifford's Inn, London, gentleman) of the fourth part; and one Robert Huggins (by the name and deſcription of Robert Huggins, of Plimouth, in the county of Hants aforeſaid, purſer of His Majeſty's ſhip the Drake) of the fifth part; one part of which ſaid indenture, ſealed with the ſeals of the ſaid William Grierſon and the ſeals of divers other perſons who executed the ſaid indenture, being creditors of the ſaid T. L. he the ſaid T. L. now brings here into court, the date whereof is the day and year in that behalf aforeſaid, reciting, amongſt other things, that the ſaid T. L. was and ſtood juſtly indebted to the ſaid R. T. and O. T. and unto his ſaid ſeveral other creditors, in the ſeveral ſums of money ſet oppoſite to their reſpective names to the ſaid indenture ſubſcribed, and which he was then unable to fully ſatisfy, and without time given him for that purpoſe, and which his ſaid creditors had agreed to give him as thereinafter mentioned; and the ſaid T. L. had therefore propoſed and agreed with his ſaid creditors, parties thereto, to advance and pay unto them, at or before the execution of the ſaid indenture, at and after the rate of eight ſhillings in the pound on the amount of their reſpective debts, and for that purpoſe had applied to and requeſted the ſaid *R. T. and O. T. to advance him the ſum of ſeven hundred and fifty pounds, to enable him to pay and ſatisfy his creditors the aforeſaid eight ſhillings in the pound*, which the ſaid R. T. and O. T. had conſented and agreed to be ſubject to the ſecurities and aſſignments therein contained (amongſt other things), That the ſaid T. L. for the ſecuring the repayment of the ſaid ſum of ſeven hundred and fifty pounds, ſo agreed to be ſent and advanced to him by the ſaid R. T. and O. T. as aforeſaid, as well to ſecure them and all other his ſaid creditors, parties thereto, the remaining twelve ſhillings in the pound, which would be due and owing unto them from and after payment of the ſaid eight ſhillings in the pound in their reſpective debts, together with lawful intereſt thereon, reſpectively had with the privity and conſent of all his ſaid creditors, parties

thereto, teſtified by their executing the ſaid indenture, agreed to aſſign over unto them the ſaid R. T. and O. T. all the houſhold goods and effects of or belonging to him the ſaid T. L. at Bury aforeſaid, or elſewhere, as alſo two certain debts in the ſaid indenture particularly mentioned, and likewiſe to direct, order, and appoint certain wages, prize-money, balance bills, tobacco money, commiſſion on ſlops, and other monies, profits, and emoluments, due and payable to him the ſaid T. L. in the ſaid indenture particularly mentioned, to be had and received by the ſaid R. T. and O. T. as agents for him the ſaid T. L. and to be paid and applied in manner thereafter for that purpoſe particularly mentioned: It was by the ſaid indenture witneſſed, that the ſaid T. L. for the conſiderations aforeſaid, and alſo in conſideration of ten ſhillings of lawful money of Great Britain, to him in hand well and truly paid by the ſaid R. T. and O. T. at or before the ſealing and delivery of the ſaid indenture, the receipt whereof was thereby acknowledged, granted, bargained, ſold, aſſigned, and ſet over unto the ſaid R. T. and O. T. all and ſingular the ſaid houſehold goods and implements of houſehold of every kind then ſtanding and being in and upon the ſaid houſe and premiſes of him the ſaid T. L. at Bury aforeſaid, or elſewhere, and alſo the ſaid two ſeveral debts or ſums of money ſo as aforeſaid due and owing, as in the ſaid indenture is particularly mentioned, to have, hold, receive, take, and enjoy, the ſaid houſehold goods and implements of houſehold, debts or ſums of money, and premiſes thereby aſſigned, or intended ſo to be, unto the ſaid R. T. and O. T. their executors, adminiſtrators, and aſſigns, from thenceforth, as and for their own proper goods, monies, and effects, for ever; but nevertheleſs upon the ſeveral truſts, and for the intents and purpoſes, thereinafter particularly mentioned and declared; and the ſaid T. L. did thereby authorize order, direct, and appoint, the ſaid R. T. and O. T. or the ſurvivor of them, or the executor or adminiſtrator of ſuch ſurvivor, by and out of the monies to be received by them or him from time to time, from any perſon or perſons whomſoever, for or on account or as agent of him the ſaid T. L. as purſer of the ſaid ſhip Goliah, or of any other ſhips, or in whatever capacity the ſaid R. T. and O. T. might act as agents for the ſaid T. L. as ſuch purſer or other officer on board the ſaid ſhip Goliah, or any other ſhip, to apply the ſame, and every part thereof, to and for, and upon the ſeveral truſts, uſes, intents, and purpoſes, in the ſaid indenture particularly mentioned and ſet forth; and the ſaid R. T. and O. T. and alſo the ſaid ſeveral other creditors of the ſaid T. L. parties thereto, for themſelves, their heirs, executors, adminiſtrators, and aſſigns, thereby amongſt other things, did covenant, promiſe and agree, to and with the ſaid T. L. his executors and adminiſtrators, by the ſaid indenture, that if it ſhould happen that the monies to be received by them the ſaid truſtees ſhould not be ſufficient to pay, ſatisfy, and diſcharge the ſaid remaining twelve ſhillings in the pound, with intereſt as aforeſaid, at the expiration of four years from the date thereof, by reaſon of the ſaid ſhip Goliah being out of commiſſion, or the removal of the ſaid

T. L.

T. L. or any other inevitable circumſtance or occurrence which might happen without his default, it was the true intent and meaning of the ſaid parties thereto, and of the ſaid indenture, that it ſhould and might be lawful to and for the ſaid T. L. to go about and tranſact his buſineſs and affairs from the date of the ſaid indenture, for the ſaid term of four years, without any ſuit, arreſt, moleſtation, or hindrance of or by the ſaid R. T. and O. T. or the ſaid ſeveral other creditors, parties thereto, their reſpective executors, adminiſtrators, or aſſigns; and if it ſhould happen that the ſaid T. L. ſhould be arreſted, ſued, attached, or moleſted, by the ſaid truſtees, or by the ſaid ſeveral other creditors executing the ſaid indenture, their executors, adminiſtrators, or aſſigns, or any of them, for any ſuch debt or demand, within the ſaid term of four years, that then and from thenceforth the ſaid executor or adminiſtrator ſhould be abſolutely freed and diſcharged againſt him or them by whom or by whoſe means, privity, or procurement, he ſhould be ſo arreſted, attached, or moleſted, of and from his, her, or their debt or debts, and all other ſums and demands whatſoever, to him, her, or them, from the ſaid T. L. due and owing on any account, or for any matter or thing whatſoever, previous to the day of the date of the ſaid indenture; and at the bottom of the ſaid indenture, oppoſite to the name and ſeal of the ſaid W. G. was ſet the ſum of thirty-two pounds ten ſhillings; as by the ſaid indenture, relation being thereunto had, will amongſt other things more fully and at large appear: And the ſaid T. L. in fact further ſaith, that the ſaid W. G. the bankrupt in the ſaid declaration, and the ſaid W. G. who executed the ſaid indenture, are one and the ſame perſon, and not other or different perſons; and that the ſaid debt or demand for which the ſaid action of the ſaid S. and T. A. aſſignees as aforeſaid, is brought, and the ſaid ſum of money ſet oppoſite the name of the ſaid William Grierſon, in the ſaid indenture, and for which he the ſaid W. G. as a creditor of the ſaid T. L. did execute the ſaid indenture, are one and the ſame debt or demand, and not other or different, and that the ſaid debt or demand ſo ſet oppoſite to the name of the ſaid W. G. in the ſaid indenture, and for which this action is brought, was due and owing from the ſaid T. L. to the ſaid W. G. previous to the day of the date of the ſaid indenture, to wit, at Weſtminſter aforeſaid, in the ſaid county of Middleſex; and this he the ſaid T. L. is ready to verify: wherefore he prays judgment if the ſaid S. and T. A. ought to have or maintain their aforeſaid action thereof againſt him, &c. SAM. MARSHALL.

Plaintiffs conſidered this plea as a complete bar to the action, and therefore gave it up.

Michaelmas Term, 33. Geo. 3.

REES *verſus* MANN. } AND the ſaid David, by James Phillips his attorney, comes and defends the wrong and injury when, &c. and ſays, that he did not undertake and promiſe.

Plea, that defendant aſſigned his property for the benefit of his creditors, under an order of the chancellor of Maryland, by virtue of an act of aſſembly.

miſe in manner and form as the ſaid George Vaufant hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, *in d.f[illegible] of the perſon, eſtate, and effects*, of or belonging to the ſaid [illegible] have and except any property if any there be after the date of a certain deed, bearing date the fifteenth day of January, in the y[illegible] Our Lord 17[illegible]88, and hereinafter mentioned, acquired, [illegible]ired, by the ſaid David, by deſcent, deviſe, bequeſt, diſtribution, he the ſaid David, by leave of the Court purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that by a certain "act of the general aſſembly of the ſtate of Maryland, the "ſame act being a law of the ſame ſtate made and paſſed at the "ſeſſion of the ſaid aſſembly begun and held on Tueſday the tenth day of April 1787 at the ſaid city of Annapolis," intituled, "An "Act reſpecting Inſolvent Debtors," it was, among other things, enacted, that every debtor for any ſum above three hundred pounds current money might apply, by petition in writing, to the chancellor (meaning the chancellor of the ſaid ſtate), and offer to deliver up to the uſe of his creditors, all his property, real, perſonal, and mixed, and to which he was in any manner entitled, a ſchedule whereof, on oath or affirmation, together with a liſt of creditors, as far as he could aſcertain the ſame, ſhould be exhibited with and annexed to ſuch petition; and thereupon the chancellor might direct perſonal notice of ſuch application to be given to the creditors, or as many of them as could be ſerved therewith, or he might direct notice of ſuch application to be publiſhed in the public newſpapers for ſuch time as he might think proper, and on their appearance, or neglect to appear on notice, at the time, or time and place appointed, the chancellor might adminiſter the following oath, to wit, "I A. B. do ſwear (or ſolemnly, ſincerely, and truly, declare "and affirm), that I will deliver up, convey, and transfer to my "creditors, in ſuch manner as the chancellor ſhall direct, all my "property that I have, or claim any title to, or intereſt in, at this "time in the world, and all debts, rights, and claims, which I have "at this time, or to which I am in any reſpect entitled to, in poſ-"ſeſſion, remainder, or reverſion; and that I have not directly or "indirectly, at any time before, ſold, conveyed, leaſed, diſpoſed "of, or entruſted any part of my property, debts, rights, or "claims, thereby to defraud my creditors, or any of them, or to "ſecure the ſame to expect any profit, benefit, or advantage "thereby;" and that the chancellor ſhould thereupon appoint a truſtee or truſtees on behalf of the creditors, and ſhould direct ſuch debtor to execute a deed to ſuch truſtee or truſtees for all his property, debts, rights, and claims, agreeable to the oath or affirmation of ſuch debtor, in truſt for his creditors; and thereupon, and upon the execution of the ſaid deed, and after the delivery of the property, books, bonds, and other evidences of debts, to ſuch truſtee or truſtees, and his or their certificate of ſuch delivery, the chancellor might order that ſuch debtor ſhould forever thereafter be acquitted and diſcharged from all debts by him owing or contracted

Recite the act of aſſembly.

at

at any time before the date of such deed; and in virtue of such order, such debtor should be for ever discharged from all debts due or contracted before the date of such deed, provided that any property thereafter acquired by such debtor, by descent, devise, bequest, or in course of distribution, should be liable to the payment of his debts, to wit, at London aforesaid, in the parish and ward aforesaid: *And* the said David further says, that after the making and passing of the said act of assembly, to wit, on the first day of May, in the year of Our Lord 1788, at the said city of Annapolis, the said David being then and there a debtor for a sum of money above three hundred pounds current money of the said state of Maryland, according to the said act, did apply, by petition in writing, to the chancellor of the said state, and offer to deliver up to the use of his creditors all his property, real, personal, and mixed, and to which he was in any manner entitled, a schedule whereof (on oath (1), together with a list of creditors, as far as he could ascertain the same, was exhibited with, and annexed to, the said petition: and thereupon the said chancellor, according to the said act, did give such notice to the creditors of the said David as by the said act is required, and did administer to the said David the said oath by the said act of assembly directed to be administered: and thereupon the said chancellor, according to the said act did appoint one William M'Laughlin, trustee on behalf of the said creditors of the said David, and did direct the said David to execute a certain deed to the said William M'Laughlin for all his the said David's property, debts, rights, and claims, agreeable to the oath of the said David, in trust for his creditors: and thereupon the said David according to the said act, in compliance with the said direction of the said chancellor, on the fifteenth day of May, in the year of Our Lord 1788, at Annapolis aforesaid, did execute to the said William M'Laughlin, being trustee for the said creditors of the said David, a deed bearing date the said fifteenth day of July 1788, of all the property, debts, rights, and claims, of him the said David, agreeable to his said oath, in trust for his said creditors, and did then and there deliver up to the said William M'Laughlin being such trustee as aforesaid, in trust for his said creditors, all the property, books, bonds, and other evidences of debts, of him the said David; and [illegible] to the time day and year last aforesaid, did certify to the delivery of the said property, books, bonds, and other evidences of the debts of him the said David to him the said William M'Laughlin, in trust for the creditors of the said David: *and* thereupon the said chancellor did then and there, according to the said act, order that the said David should for ever thereafter be acquitted and discharged from all [illegible] the said David owing or contracted at any time before the said deed, so by him the said David to the said William M'Laughlin executed as aforesaid, that any property acquired by the said David from and after the date of the said deed, by descent, devise, bequest, or in course of distribution, should be liable to the payment of the debts of him the said David,

Defendant petitioned the chancellor of the state, &c. &c. &c. according to the act.

(1) or "on affirmation of defendant, being a quaker."

Deed executed a trustee for creditors, dated 15 July 1788.

Chancellor's order.

David, to wit, at London aforesaid, in the parish and ward aforesaid: *And the said* David avers, that he the said David and the said plaintiff, at the time of the accruing of the said several causes of action in the said declaration mentioned, and until and at the time of the said order of discharge, were inhabitants and resident in the said state of Maryland, and that the said several causes of action accrued within the said state, and were owing and contracted before the date of the said deed so executed by the said David to the said William M'Laughlin, in trust for the creditors of the said David as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid; and this he the said David is ready to verify: wherefore he prays judgment, and that his person, estate, and effects, save and except any property, if any there be after the date of the said deed acquired, or to be acquired, by descent, devise, bequest, or in course of distribution, may be discharged, &c. *And* for further plea in this behalf the said David, by like leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that after the making and passing of the said act of assembly, to wit, on the first day of May, in the year of Our Lord 1788 aforesaid, in the city of Annapolis, the said David being then and there a debtor for a sum of money above three hundred pounds current money of the said state of Maryland, according to the said act, did apply by petition in writing to the chancellor of the said state, and offer to deliver up to the use of his creditors all his property, real, personal, and mixed, and to which he was entitled, a schedule whereof on oath, together with a list of creditors, so far as he could ascertain the same, was exhibited with and accrued to the said plaintiff: and thereupon the said chancellor, according to the said act, did give such notice to the creditors of the said David as by the said act is required, and did administer to the said David the said oath by the said act of assembly directed to be administered: and thereupon the said chancellor, according to the said act, did appoint one William M'Laughlin, a trustee on behalf of the said creditors of the said David, and did direct the said David to execute a deed to the said William M'Laughlin for all the said David's property, debts, rights, and claims, agreeable to the said oath of the said David, in trust for his creditors: and thereupon the said David, according to the said act, in compliance with the said direction of the said chancellor, on the fifteenth day of July, in the said year of Our Lord 1788, at Annapolis aforesaid, did execute to the said William M'Laughlin, so being trustee for the said creditors of the said David, a deed bearing date the fifteenth day of July 1788, of and for all the property, debts, rights, and claims, of him the said David, agreeable to his said oath, in trust for his creditors, and did then and there deliver up to the said William M'Laughlin, so being trustee as aforesaid, in trust for his said creditors, all the property, books, bonds, and other evidences of debts of him the said David, and the said William

Averment, that both parties were inhabitants of the state, and the plaintiff's debt there contracted.

3d Plea more general than the last, and in total bar, the other being only a partial bar.

William M'Laughlin afterwards, to wit, on the day and year last aforesaid, did certify to the said chancellor the delivery of the said property, books, bonds, and other evidences of debts, of the said David, by him the said David to him the said William M'Laughlin, in trust for the creditors of him the said David: and thereupon the said chancellor did then and there, according to the said act, order that the said David should for ever after be acquitted and discharged from all debts by him the said David owing and contracted at any time before the date of the said deed so by him the said David to the said William M'Laughlin executed as aforesaid (except that any property acquired by the said David from and after the date of the said deed, by descent, devise, bequest, or in course of distribution, should be liable to the payment of the debts of him the said David), to wit, at London aforesaid, in the parish and ward aforesaid. *And* the said David avers, that he the said David and the said J. G. at the time of the accruing of the said several causes of action in the said declaration mentioned, and until and at the time of the said order and discharge, were inhabitants and residents in the said state of Maryland, and that the said several causes of action accrued within the said state, and were owing and contracted before the date of the said deed, so executed by the said David to the said William M'Laughlin, in trust for the creditors of him the said David as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid: And the said David avers, that he hath not since the date of the said deed acquired any property by descent, devise, bequest, or in course of distribution; and this he the said David is *ready to verify*: wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

GEO. WOOD.

I think the plea of delivering up his effects, in satisfaction will be of no use independant of the efficacy it derives under the act; therefore I have omitted it, and pleaded two pleas adapted to the act, one as a partial bar, the other as a total bar, averring, that defendant has not acquired any property by descent, &c.

The property-defendant acquired by his wife, I apprehend, does not fall within the exception.

It is necessary in the pleas to set out the acts, as the court here cannot take judicial notice of the laws of other states. The order of discharge does not mention even the date of the deed, or recite any of the antecedent proceedings; therefore it may probably be necessary to amend the pleas hereafter; but that cannot be determined upon till plaintiff has replied, when it will be seen what issue he takes.

G. WOOD.

In the Common Pleas, Trinity Term, 29. Geo. 3.

PLAISTOW, ESQ. *at the suit of* STACIE. } AND the said Richard, by William Barnett, his attorney, comes and defends the wrong and injury, when, &c.; and as to the sum of thirteen pounds eleven shillings and sixpence, parcel of the said several sums of money in the said declaration mentioned, says, that he cannot deny the said action of the said John in that respect, nor but that he the said Richard did undertake and promise in manner and form as the said John hath above thereof complained against

Confession on the action as to part, and *non assumpsit* as to the residue; with judgment as to the part con-

againſt him, not but that the ſaid John hath ſuſtained damage by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned as to the ſaid ſum of thirteen pounds eleven ſhillings and ſixpence, that is to ſay, to the amount thereof, over and above his coſts and charges by him about his ſuit in that behalf expended; and as to the reſidue of the ſaid ſeveral ſums of money in the ſaid declaration mentioned the ſaid Richard ſays, that he did not undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him; and of this he puts himſelf upon the country, and the ſaid John doth the like: and inaſmuch as the ſaid Richard hath not denied the ſaid action of the ſaid John as to the ſum of thirteen pounds eleven ſhillings and ſixpence, part of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, but admits the ſame to be true, and that the ſaid John hath ſuſtained damage on occaſion of the non-performance of the ſaid promiſes and undertakings in the ſaid declaration mentioned, as to that money, to the amount thereof, that is to ſay, to thirteen pounds eleven ſhillings and ſixpence over and above his coſts and charges in that behalf, the ſaid John prays judgment for thoſe damages over and above his coſts and charges: therefore it is conſidered, that the ſaid John recover ſuch damages againſt the ſaid Richard over and above his coſts and charges in that behalf: but becauſe it is convenient that there be but one taxation of damages in this ſuit, therefore let all further proceedings as to their coſts and damages ſtay until after the trial of the ſaid iſſue above joined between the parties; and to try the ſaid iſſue, ſo joined between the ſaid parties, the ſheriff is commanded that he cauſe to come here in twelve, &c. by whom, &c. who neither, &c. to recognize, becauſe as well, &c.

V. LAWES.

Plea of *nil habuit in tenementis* to action for uſe and occupation.

BENTHAM, ESQ. *at the ſuit of* CLERKE, EXECUTOR, &c. } AND ſaid defendant, by, &c. his attorney, comes and defends the wrong and injury, when, &c.; and as to the promiſe and undertaking in ſaid declaration above mentioned ſays, that ſaid plaintiff *actio non*, becauſe proteſting, that he made no ſuch promiſe as in ſaid declaration is above ſuppoſed; for plea in this behalf ſays, that ſaid John Leach (the plaintiff's teſtator) in his lifetime had no eſtate or intereſt of or in the ſaid meſſuage or dwelling-houſe, coach-houſes, ſtables, with the appurtenances, in ſaid declaration mentioned, or in any part thereof, at any time that in and by the ſaid declaration is above ſuppoſed, that ſaid defendant held, uſed, occupied, poſſeſſed, and enjoyed the ſame; and this ſaid defendant is ready to verify: wherefore he prays judgment if ſaid plaintiff ought to have or maintain his aforeſaid action againſt him, &c.

J. WALLACE.

AND

That ſmuggled goods were the conſideration of the bills of exchange.

Vid. Black. Rep. 445.

AND for further plea, as to the firſt, ſecond, third, fourth, fifth, ſixth, ſeventh, and eighth promiſes and undertakings in the ſaid declaration mentioned, he ſaid defendant, by leave, &c. ſays, that ſaid plaintiff *actio non*, becauſe he ſaith, ſaid ſeveral bills of exchange in ſaid firſt, &c. &c. Counts of ſaid declaration mentioned (if any ſuch were drawn by ſaid defendant and delivered by him to ſaid plaintiffs), were drawn by ſaid defendant, and delivered by him to ſaid plaintiff for the purpoſe of paying off and diſcharging a certain ſum of money, to wit, the ſum of two hundred and fifty-two pounds, before that time claimed by ſaid plaintiff to be due and owing to him from ſaid defendant for a large quantity of a certain commodity, to wit, tea, before that time ſold and delivered to ſaid defendant by him ſaid plaintiff, and which tea had before that time been ſmuggled and brought into this kingdom without ever having paid the duty which on the importation of the ſame into this kingdom was, according to the laws and ſtatutes of this realm, of right due and payable to our ſovereign lord the now king, and ought to have been paid, to wit, by ſaid plaintiff, for ſaid tea, and which ſaid duty was then, and ſtill is, wholly due, in arrear, and unpaid, unto our ſaid lord the now king, and for no other conſideration whatſoever, and ſo ſaid plaintiff well knew at the ſeveral and reſpective times of the making of ſaid ſeveral bills of exchange, and of the delivery thereof to him ſaid plaintiff by ſaid defendant, and of his accepting and taking ſaid bills, to wit, &c. aforeſaid: wherefore the pretended conſideration for ſaid bills of exchange, and for each and every of them, was and is void in law; and therefore, by reaſon of the premiſes, the ſaid ſeveral bills of exchange in ſaid firſt, ſecond, &c. &c. Counts of ſaid declaration mentioned, and the ſeveral promiſes in thoſe Counts mentioned, were, and each of them was and is, wholly void in law, and of no force and effect, to wit, at, &c. aforeſaid; and this, &c.: wherefore, &c. if, &c. J. MORGAN.

I do not think this plea good in point of law, but you may ſee what plaintiff will do. J. MORGAN.

Plea to an action on a feigned iſſue to the bankrupt *vel non*.

AND the ſaid William C. S. by Thomas C. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that true it is that ſuch diſcourſe was moved and had by and between the ſaid Charles C. Richard L. and Thomas R. and the ſaid W. C. S. and that he the ſaid W. C. S. did undertake and promiſe in manner and form as the ſaid C. C. R. L. and T. R. have above thereof, in and by their ſaid declaration alledged: But the ſaid W. C. S. ſays, that the ſaid C. C. R. L. and T. R. ought not to have their aforeſaid action thereof maintained againſt him; becauſe he ſays, that he the ſaid W. C. S. was not a bankrupt within the true intent and meaning of the ſeveral ſtatutes made relating to bankrupts, at the time of the iſſuing of the ſaid commiſſion of bankrupt againſt the ſaid W. C. S. as the ſaid C. C. R. L. and T. R. have above and by their ſaid declaration alledged; and of this he puts himſelf upon the country, and the ſaid C. C. R. L. and T. R. do the like, &c.: therefore let a jury come before our lord the king at Weſtminſter, on Thurſday next after eight days of the

king

Purification of the Bleſſed Virgin Mary, by whom, &c. who neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the ſaid parties at the ſame place. THOS. WALKER.

PLEAS IN DISCHARGE

ACCORD AND SATISFACTION.

Plea (to a declaration at the ſuit of aſſignees of a bankrupt) that after the making the promiſe mentioned in the declaration, defendant gave the bankrupt a bond in diſcharge of thoſe promiſes.

1ſt *Non aſſumpſit.* And for further plea in this behalf, the ſaid defendant by leave, &c. *action non*, becauſe he ſaith, that he ſaid defendant, after the making of the ſaid ſeveral promiſes and undertaking in the ſaid declaration mentioned, and before ſaid J. F. ſo became a bankrupt as aforeſaid, and alſo before the exhibiting of the bill of ſaid plaintiffs as ſuch aſſignees as aforeſaid, againſt him ſaid defendant, to wit, on, &c. made and ſealed, and as his act and deed delivered unto the ſaid J. F. a certain writing obligatory in the penal ſum of three hundred pounds, conditioned for the payment of one hundred and fifty pounds of lawful, &c. at fifteen pounds every ſix months, the firſt payment thereof to be made on, &c. and which ſaid writing obligatory ſaid defendant then and there before ſaid J. F. ſo became a bankrupt as aforeſaid, delivered unto him ſaid J. F. in full ſatisfaction and diſcharge of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and ſaid J. F. then and there before he ſo became bankrupt, accepted and received the ſaid writing obligatory from the ſaid defendant, in full ſatisfaction and diſcharge of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; and this he the ſaid George is ready to verify, wherefore, &c. if, &c. GEO. WOOD.

Replication to the laſt plea, that A. B. (the bankrupt) being inſolvent, the bond was given with a fraudulent view to delay the payment of the debt, and to keep ſame from the creditors, ſtating that a commiſſion iſſued, and that the plaintiffs were choſen aſſignees.

And the ſaid plaintiffs, as to the ſaid plea of ſaid defendant, by him laſtly above pleaded in bar, ſay, that they by reaſon of any thing by ſaid defendant above in that plaintiff alledged, ought not to be barred from having and maintaining their aforeſaid action thereof againſt him, becauſe they ſay, that after the making of the ſaid promiſes and undertakings in the ſaid declaration mentioned, and before and at the time of the making and delivering of the ſaid writing obligatory, in the ſaid plea of ſaid defendant above pleaded in bar mentioned, and before the actual ſuing out of any commiſſion of bankrupt againſt ſaid J. F. he ſaid J. F. was indebted to divers perſons, in divers large ſums of money, and was inſolvent and unable to pay his creditors, and was likely to become a bankrupt; and being ſo inſolvent, and unable to pay his creditors, and being likely to become a bankrupt, he ſaid J. F. afterwards, and before the making of the ſaid writing obligatory in the ſaid plea mentioned, to wit, on, &c. at, &c. gave notice thereof to the ſaid defendant, and the ſaid defendant then and there being indebted to ſaid J. F. in a large ſum of money, upon and by virtue of the promiſes and undertakings in the ſaid declaration mentioned, then

then and there due and payable to ſaid J. F. it was then and there fraudulently and by the covenant of ſaid J. F. and defendant, then and there had between ſaid J. F. and defendant, in order to delay the payment of the ſaid money ſo due and owing from ſaid defendant to ſaid J. F. and to keep the ſame from the creditors of ſaid J. F. for a long time, to wit, for the reſpective times in the ſaid plea mentioned, and in view and contemplation of the bankruptcy of ſaid J. F. agreed between the ſaid J. F. and the ſaid defendant, that the ſaid J. F. ſhould give time for payment ſo due and owing from the ſaid defendant to the ſaid J. F. on the promiſes and undertakings in the ſaid declaration mentioned; and the ſaid defendant ſhould make and execute to ſaid J. F. the ſaid writing obligatory, in the ſaid plea mentioned, for the payment of the ſaid money ſo due and owing to ſaid J. F. as aforeſaid, by the ſaid inſtalments in the ſaid plea mentioned, and ſaid plaintiffs further ſay, that the ſaid J. F. remained and continued ſo inſolvent and unable to pay his creditors, from the time of the making and delivering of the ſaid writing obligatory until the ſuing out of the commiſſion of bankrupt hereinafter mentioned, to wit, &c., and ſaid plaintiffs further ſay, that J. F. afterwards, to wit, on, &c. at, &c. did abſent himſelf from his dwelling-houſe, &c. for to delay his creditors of their juſt and reaſonable debts; and ſaid J. F. being a ſubject of this kingdom, and there for a long time before using and exerciſing the trade of merchandize, by way of bargaining, exchanging, bartering, and dealing his goods of ſuch, by buying and ſelling, and [illegible] *men* and one A. C. in the ſum of, &c. or lawful, &c. and upwards, for a true and juſt debt, owing and owing from ſaid J. F. to them as aforeſaid, and to divers perſons in divers large ſums of money, to wit, on, &c. at, &c. the aforeſaid debt to ſaid B. and A. C. and to ſaid other debts then and ſtill being due, and no ways paid or ſatisfied, he ſaid J. F. became a bankrupt, within the true intent and meaning of the ſeveral ſtatutes concerning bankrupts made and provided: and ſaid J. F. ſo being and continuing a bankrupt as aforeſaid, and the ſaid debts ſo remaining unpaid and unſatisfied afterwards, to wit, on, &c. on the petition of B. and A. C. as well for themſelves, as all other the creditors of ſaid J. F. made and exhibited in writing, according to the form of the ſtatute in ſuch caſe made and provided to the right honourable lord Thurlow, then and ſtill being lord high chancellor of Great Britain, a certain commiſſion of our lord the now king, ſealed with the great ſeal of Great Britain, in due manner iſſued out of his majeſty's high court of chancery, the ſaid court then and ſtill being at Weſtminſter, in, &c. againſt ſaid J. F. directed to A. H. J. L. P. J. H. H. eſquires, and J. W. gentleman, by which ſaid commiſſion our lord the king did name, aſſign, and appoint, conſtitute, and ordain them ſaid A. H. &c. his ſpecial commiſſioners, thereby giving full power and authority to the ſaid commiſſioners, or any four or three of them, to proceed according to the ſtatute in the ſaid commiſſion ſpecified, and all

One of the plaintiffs.

other ſtatutes in force concerning bankrupts, not only concerning the bankrupt, his body, lands, tenements, freehold, and cuſtomary goods, debts, and other things whatſoever, but alſo concerning all other perſons who by concealment, claim, or otherwiſe, did, or ſhould offend touching the premiſes in the ſaid commiſſion ſpecified, or any part thereof, contrary to the true intent and meaning of the ſame ſtatute, and to do and execute all and every thing and things whatſoever, as well for and towards ſatisfaction and payment of the ſaid creditors, as towards and for all other intents and purpoſes according to the ordinance and reviſions of the ſame ſtatute, the ſaid lord the king by the ſaid commiſſion, willing and commanding the ſaid A. B. &c. and four or three of them to proceed to the execution and accompliſhment of the ſaid commiſſion, according to the true intent and meaning of the ſtatute, with all due diligence and effect as by the ſaid commiſſion more fully appears, which ſaid commiſſion is ſtill in due force and effect, by virtue of which ſaid commiſſion, and by force of the ſeveral ſtatutes ſaid P. J. &c. three of the commiſſioners named in the ſaid commiſſion afterwards, to wit, on, &c. at, &c. in due form of law did adjudge and declare, that ſaid J. F. before the date and ſuing forth of the ſaid commiſſion againſt him, became and was a bankrupt, within the true intent and meaning of the ſeveral ſtatutes then in force concerning bankrupts, ſome or one of them adjudged and declared him a bankrupt accordingly, to wit, on, &c. at, &c. and ſaid plaintiffs further ſay, that afterwards, to wit, on, &c. at, &c. ſaid J. F. then remaining and continuing a bankrupt, the ſaid P. J. &c. three of the commiſſioners in the ſaid commiſſion named, by certain indentures then and there made between one T. V. of the firſt part, the ſaid P. J. &c. of the ſecond part, and ſaid plaintiffs then and there being creditors of the ſaid J. F. of the third part, the record part of which ſaid indenture, ſealed with the ſeals of ſaid P. J. &c. the ſaid plaintiffs now bring here into court, the date whereof is, &c. bargained, ſold, aſſigned, and tranſferred to ſaid plaintiffs, among other things, all the debts and ſums of money due and owing to the ſaid J. F. in truſt; nevertheleſs to the uſe and benefit of ſaid plaintiffs, and all other the creditors of ſaid J. F. who then had demanded, or afterwards ſhould in due time come and demand the ſame by virtue of the ſaid commiſſion, and ſhould contribute towards the expences of the ſame according to the limitations of the aforeſaid ſtatutes; and ſo ſaid plaintiffs ſay, that the ſaid agreement between ſaid J. F. and ſaid defendant, in the plea of ſaid defendant laſtly above pleaded in bar mentioned, and the ſaid writing obligatory in that plea mentioned are void and againſt law, and this they are ready to verify; wherefore they pray judgment and their damages, by reaſon of the not performing the ſaid promiſes and undertakings in the ſaid declaration mentioned, to be adjudged to them, &c.

WILLIAM BALDWIN.

JOHNSON

JOHNSON *at the ſuit of* PINFOLD. } 1ſt. Plea. *Non aſſumpſit.* And for further plea, as to the four firſt promiſes and undertakings in the ſaid declaration mentioned, and above ſuppoſed to have been made by the ſaid defendant, he the ſaid defendant by leave, &c. *actio non*; becauſe he ſaith that the ſaid ſeveral walls in the four firſt Counts of the ſaid declaration mentioned, *and thereby alledged to have been pulled down by the ſaid defendant, were and are one and the ſame wall*, and not divers or different walls, and that after the making of the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and before any breach thereof, or of any or either of them, and before the pulling down of the ſaid wall ſo pulled down by the ſaid defendant as aforeſaid, to wit, on, &c. at, &c. it was agreed by and between the ſaid plaintiff and defendant, that the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and the performance thereof, ſhould be from thenceforth waived by and between them the ſaid plaintiff and defendant, and that the ſaid defendant ſhould be at liberty to pull down the ſaid wall ſo by him pulled down as aforeſaid, and that in conſideration thereof the ſaid defendant ſhou[ld] and [would] give and pay to the ſaid defendant, a certain large ſum of money, to wit, the ſum of five pounds five ſhillings, of lawful money of Great Britain; and the ſaid defendant in fact further ſaith, that the ſaid agreement [was] ſo made between him the ſaid defendant and the ſaid plaintiff, the ſaid plaintiff did in purſuance thereof, then and there to wit, on, &c. at, &c. and before the ſaid wall was ſo pulled down by him the ſaid defendant as aforeſaid, waive and diſcharge [the] defendant [and] from the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and from the performance thereof, and did alſo then and there give liberty, and leave and licence to the ſaid defendant to pull down the ſaid wall, and the ſaid defendant did in conſideration thereof, and in purſuance of the ſaid agreement, then and there give and pay [to] the ſaid plaintiff ſuch ſum of money as aforeſaid, that is to ſay, the ſaid ſum of five pounds five ſhillings, of lawful money of Great Britain, ſo agreed to be paid and given by him as aforeſaid, which ſaid ſum of five pounds five ſhillings the ſaid plaintiff then and there took, accepted, and received of and from him the ſaid defendant in conſideration for ſuch liberty to pull down the ſaid wall as aforeſaid, and by way of ſatisfaction or equivalent for the damage to be thereby done to or ſuſtained by him the ſaid plaintiff; and this, &c. wherefore, &c. if, &c. his aforeſaid action, as to the [four] firſt promiſes and undertakings in the ſaid declaration mentioned againſt him, &c. and for further plea, as to the four firſt promiſes and undertakings in the ſaid declaration mentioned, and above ſuppoſed to have been made by the ſaid defendant, he the ſaid defendant, by like leave, &c. *actio non*; becauſe he ſaith, that the ſaid ſeveral ſuppoſed walls in the ſaid four firſt Counts of the ſaid declaration mentioned were and are one and the ſame wall, and not divers or different walls, and that he the ſaid defendant after the making of the ſaid four firſt

Plea, that it was agreed between plaintiff and defendant, that the promiſes in declaration mentioned, and the performance thereof ſhould be waived, that defendant ſhould be at liberty to pull down wall, and in conſideration thereof, defendant ſhould pay to plaintiff five pounds five ſhillings, plaintiff waived promiſes, and defendant paid plaintiff the five pounds five ſhillings, in ſatisfaction of the damages to be thereby done to plaintiff.

promiſes and undertakings in the ſaid declaration mentioned, to wit, on, &c. gave and paid to the ſaid plaintiff a certain large ſum of money, to wit, the ſum of five pounds five ſhillings, of lawful money of Great Britain, in ſatisfaction and diſcharge of the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and of all damages to be ſuſtained by the ſaid plaintiff, by reaſon or in conſequence of pulling down the aforeſaid wall; which ſaid ſum of five pounds five ſhillings, he the ſaid plaintiff then and there took, accepted, and received of and from the ſaid defendant, in ſatisfaction and diſcharge of the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and of all damages to be ſuſtained by the ſaid plaintiff by reaſon or in conſequence of pulling down the aforeſaid wall; and this, &c. wherefore, &c. if, &c. V. LAWES.

Replication and iſſue to the laſt plea, that true it is, that the walls are the ſame, proteſting that plaintiff did not waive &c. promiſes, and that defendant did not pay, nor did plaintiff accept ſaid 5l. 5s. in ſatisfaction of the damages done to plaintiff. Replication that it was not agreed as is mentioned in plea.

And the ſaid plaintiff, as to the ſaid plea of the ſaid defendant, by him ſecondly above pleaded in bar as to the four firſt promiſes and undertakings in the ſaid declaration mentioned and above made by the ſaid defendant, ſays, that he the ſaid plaintiff ought not to be barred from having or maintaining his aforeſaid action thereof againſt him the ſaid defendant; becauſe he ſaith, that though true it is that the ſaid ſeveral walls in the ſaid four firſt Counts of the ſaid declaration mentioned were and are one and the ſame wall, and not divers or different walls, as the ſaid defendant hath above in that plea alledged: Yet, proteſting that he the ſaid plaintiff did not waive or diſcharge the ſaid defendant of and from the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and from the performance thereof, or of or from any or either of them; and that he the ſaid defendant did not give or pay to the ſaid plaintiff, nor did he the ſaid plaintiff take, accept, and receive of and from him the ſaid defendant the ſaid ſum of five pounds five ſhillings in the ſaid ſecond plea mentioned, as or by way of ſatisfaction or equivalent for the damage to be done to or ſuſtained by him the ſaid plaintiff by pulling down of the wall as in the ſaid ſecond plea is in that behalf alledged. For replication in this behalf he the ſaid plaintiff ſaith, that it was not agreed by and between him the ſaid plaintiff and the ſaid defendant in manner and form as the ſaid defendant hath above in his ſaid ſecond plea in that behalf alledged; and this he the ſaid plaintiff prays may be enquired of by the country, and the ſaid defendant doth the like. And as to the ſaid plea of, &c. *precludi non*; becauſe he ſaith, that though true it is, that ſeveral ſuppoſed walls in the ſaid four firſt Counts of the ſaid declaration mentioned, were and are one and the ſame wall, and not divers or different walls, as the ſaid defendant hath above in his ſaid third plea in that behalf alledged: Yet, proteſting that the ſaid defendant did not give or pay to the ſaid plaintiff the ſaid ſum of five pounds five ſhillings in the ſaid third plea mentioned, in ſatisfaction and diſcharge of the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and of all damages to be ſuſtained by the ſaid plaintiff,

by

by or in conſequence of pulling down the aforeſaid wall, as the ſaid defendant hath above in his ſaid third plea in that behalf alledged. For replication in this behalf he the ſaid plaintiff ſaith, that he the ſaid plaintiff did not take, accept, or receive the ſaid ſum of five pounds five ſhillings of and from him the ſaid defendant in ſatisfaction and diſcharge of the ſaid four firſt promiſes and undertakings in the ſaid declaration mentioned, and of all damages to be ſuſtained by the ſaid plaintiff, by reaſon and in conſequence of pulling down the aforeſaid wall, in manner and form as the ſaid defendant hath above in his ſaid third plea in that behalf alledged; and this he the ſaid plaintiff prays may be enquired of by the country, and the ſaid defendant doth the like, &c.; therefore, as well to try this iſſue, as the ſeveral other iſſues above joined between the parties aforeſaid, the ſheriff is commanded that he cauſe to come here in twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

V. LAWES.

Plea of promiſſory note given for the money due on the promiſes in the declaration.

(ACTIO NON); becauſe he ſays, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the commencement of this ſuit, to wit, on the firſt of Auguſt 1765, at Weſtminſter aforeſaid, in the county aforeſaid, an account was had and ſtated by and between the ſaid Hugh and Alexander, of and concerning the ſaid ſeveral ſums of money in the ſaid declaration above mentioned, and divers other ſums of money then due and owing from the ſaid H. to the ſaid A. and upon that account the ſaid A. was then and there found in arrear to the ſaid Hugh in ten pounds of, &c. of which ſaid ſum of ten pounds he the ſaid A. then and there made and ſigned his promiſſory note in writing to the ſaid H. by which ſaid note the ſaid A. promiſed to pay to the ſaid H. or his order, upon demand, the ſum of ten pounds, for value then mentioned to be received by the ſaid A.; and the ſaid A. then and there delivered the ſaid note to the ſaid H. and the ſaid H. afterwards, to wit, on the day and year above ſaid, at Weſtminſter aforeſaid, in the county aforeſaid, by his indorſement, in writing by his own hand ſigned on the ſaid note, ſo given to him by the ſaid A. as aforeſaid, appointed the contents of the ſaid note to be paid to the ſaid William Parks, or his order, for value received; by reaſon whereof the ſaid A. became liable, and ſtill is liable, to pay the ſaid William the ſaid ſum of ten pounds: And this, &c. wherefore, &c.

I apprehend this is a good plea, becauſe of the indorſements; if the plea in bar had been only as to the note given by the defendant to the plaintiff, it would perhaps be doubtful. A promiſe to pay a ſum of money at another day is no diſcharge of the action, or that one bond was given for another. A payment of part and promiſe to pay the reſt at a future day held good. Cro. El. 204, 205. Mod. 136.

Plea that defendant gave plaintiff two pieces of broad cloth in satisfaction, &c.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and says, that the plaintiff (*actio non*); because he saith that the said defendant, after the making of the said several promises and undertakings in the said declaration mentioned, and of each of them, and before the exhibiting the bill of the said plaintiff, to wit, on the day of A. D. aforesaid, at, &c. aforesaid, gave and delivered unto him the said plaintiff two pieces of broad cloth, *in full satisfaction and discharge* * of the said several promises and undertakings of him the said defendant, in the said declaration mentioned, and of all the damages and sums of money thereupon due and owing, or accrued, which said two pieces of broad cloth, the said plaintiff then and there took, accepted, and received of and from the said defendant, as for and in full satisfaction and discharge of the said several promises and undertakings of the said defendant in the said declaration mentioned, and of the whole damages and sums of money before mentioned; and this he the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c. And the said plaintiff saith, that he, by any thing by the said defendant in his said plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant; because, protesting that the said defendant did not deliver to him the said plaintiff the said two pieces of broad cloth in the said plea mentioned, or any part thereof, in full satisfaction and discharge of the said promises and undertakings of the said defendant in the said declaration mentioned, and of all the damages and sums of money thereupon due and owing or accrued in manner and form as the said defendant hath above in his said plea in that behalf alledged: nevertheless, for replication in this behalf, the said plaintiff saith, that he the said plaintiff did not accept or receive the said two pieces of broad cloth in the said plea mentioned, or any part thereof, of or from the said defendant, in full satisfaction or discharge of the said several promises and undertakings of the said defendant in the said declaration mentioned, and of the whole damages and sums of money before mentioned, in manner and form as the said defendant hath above in and by his said plea in that behalf alledged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c.; therefore, &c.

* That this is the best mode of pleading, and not by way of accord, see 9. Co. 106. 1. Ld. Raym. 60. 566

On demurring to a plea for omitting that words, and only saying that plaintiff accepted in satisfaction, &c. they were held not to be absolutely necessary, see Gilb. Ca 234; but the bar shewing that defendant gave the thing in satisfaction, without alledging that plaintiff received and accepted it as such, would be insufficient. See 1. Stra. 573 23. To an action upon a bond without any condition, the matter must be pleaded to be by defendant, perhaps where there appears to be a condition for the payment of money. See 2 Wilf 86, 87. 6. Rep. 43. Cro. Jac. 254.

AND the said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said plaintiff (*actio non*); because he saith, that he the said defendant, after the making of the said promises and undertakings in the said declaration mentioned, and before the exhibiting, &c. to wit, on, &c. at, &c. made and sealed, and as his act and deed delivered unto the said plaintiff a certain writing-obligatory for the payment of &c. of lawful, &c. and interest for the same, at a certain day then to come; and which said writing-obligatory the said defendant then and there delivered to the said pla ..ff, in full satisfaction and discharge of the said several promi.. nd undertakings in the said declaration mentioned; and which .. writing-obligatory the said plaintiff then and there accepted an.. ceived of and from the said defendant, in full satisfaction, paym.., and discharge of the said several promises, &c.; and this, .. wherefore, &c. if, &c.

Plea that bond was delivered in satisfaction.

AND the said John, by James G. his attorney, comes and defends the wrong and injury, when, &c. and saith, that the said Isaac ought not to have his said action for the same against him; because he says, that after the making of the said several promises and undertakings aforesaid mentioned in the said declaration of the said Isaac, before the day of suing out of the original writ of the said Isaac, to wit, on the first day of January 1779, he the said John gave and delivered to the said Isaac one mahogany beaureau and book-case, in full satisfaction and discharge of the several promises and undertakings mentioned in the said declaration, and of all the sums of money therein contained; which said mahogany beaureau and book-case, so given in full satisfaction and discharge as aforesaid, he the said Isaac then and there accepted, received, and took of the said John, in full satisfaction and discharge of the said several promises and undertakings mentioned in the said declaration, and of all the sums of money therein contained; and this he is ready to verify; wherefore he prays judgment if the said Isaac ought to have his said action against him, &c.

W. MANLEY.

Plea that defendant accepted a mahogany beaureau and book-case, which plaintiff accepted in satisfaction and discharge.

And the said Isaac says, that by reason of any thing by the said John above in pleading alledged, he the said Isaac ought not to be barred from having or maintaining his said action thereof against the said John; because, protesting that the said John did not give and deliver to him the said Isaac one mahogany beaureau and book-case, in full satisfaction or discharge of the several promises and undertakings mentioned in the said declaration, as the said John hath above in pleading alledged: Yet, for replication in this behalf, the said Isaac saith, that the said Isaac *did not accept, receive, and take* of and from the said John the said mahogany beaureau and book-case, in full satisfaction and discharge of the said several promises and undertakings mentioned in the said declaration,

Replication that plaintiff did not accept, &c. in satisfaction.

ration, in manner and form as the ſaid John hath above in pleading alledged; and this he the ſaid Iſaac prays may be enquired of by the country, and the ſaid John doth the like, &c.; therefore let a jury come before our ſaid lord the king at Weſtminſter, on next after , by whom, &c. and who neither, &c.; to recognize, &c.; becauſe, as well, &c; the ſame day is given to the ſaid parties there, &c.

Plea of an agreement, that defendant ſhould pay plaintiff's creditor a debt due to him from plaintiff, and that it ſhould be deemed a ſatisfaction from defendant pleaded.

TINDALL *againſt* READ. } FIRST, *Non aſſumpſit.* 2d, And for further plea, &c. ſaid defendant by leave, &c. ſaith, that ſaid plaintiff (*actio non*); becauſe he ſaith, that long before the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, the ſaid plaintiff was retained and employed in the way of his art or buſineſs of a builder by ſaid defendant, to erect and build certain erections, edifices, and buildings of and for the ſaid defendant, to wit, at Weſtminſter aforeſaid; and being ſo retained and employed as aforeſaid, he the ſaid plaintiff afterwards, and before the making the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and long before the ſuing forth, &c. againſt the ſaid defendant, appointed, commiſſioned, and deputed one James Pigney, who was then, and yet is, a builder, to ſuperintend, direct, do, and perform, as well the ſaid buſineſs of the ſaid defendant, as divers other affairs and buſineſs for him the ſaid plaintiff, to wit, at Weſtminſter aforeſaid: And the ſaid defendant further ſaith, that the ſaid J. P. being ſo appointed, &c. aforeſaid, in manner and for the purpoſes aforeſaid, he the ſaid J. P. did accordingly afterwards, and before the making of the agreement hereafter mentioned, and alſo before the ſuing forth, &c. ſuperintend and direct the erecting and building and erections and buildings, and the repairing and amending the ſaid other edifices and buildings of the ſaid defendant, of and for him the ſaid plaintiff, to wit, at, &c. aforeſaid; and thereupon afterwards, and after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the ſuing forth, &c. to wit, on the firſt day of January, A. D. 1776, at Weſtminſter aforeſaid, a certain diſcourſe was had and moved by and between the ſaid plaintiff and the ſaid defendant, of and concerning the premiſes, and alſo of and concerning the means by which the ſaid plaintiff ſhould be ſatisfied by the ſaid defendant for his labour, care, diligence, and expences in and about the ſaid premiſes; and upon that diſcourſe it was then and there, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, agreed by and between the ſaid plaintiff and the ſaid defendant, that the ſaid defendant ſhould pay or cauſe to be paid to the ſaid J. P. the ſum of five hundred pounds, of lawful, &c. as and for a payment for and in behalf, and of and from him the ſaid plaintiff to the ſaid J. P. for money due and owing from the ſaid plaintiff to the ſaid J. P. and that on payment thereof he the ſaid defendant ſhould be wholly releaſed, exonerated, and diſcharged of and from the ſaid ſeveral promiſes

promiſes and undertakings in the ſaid declaration mentioned, and alſo of and from all damages and ſums of money thereupon due, owing, and accrued: And the ſaid defendant further ſaith, that he, confiding in the ſaid agreement, ſo made between her the ſaid plaintiff and the ſaid defendant; and the ſaid plaintiff in manner as aforeſaid, did afterwards, to wit, on the third day of February in the year laſt aforeſaid, at, &c. aforeſaid, in purſuance of the ſaid agreement, and by and with the knowledge, privity, and conſent of the ſaid plaintiff, pay unto the ſaid J. Pingney the ſaid ſum of five hundred pounds in the ſaid agreement mentioned, and which ſaid ſum of five hundred pounds he the ſaid J. Pingney then and there took, accepted, and received of and from him the ſaid defendant, as and for payment for and on behalf, and of and from the ſaid plaintiff to him the ſaid J. P. to wit, at Weſtminſter aforeſaid; by reaſon whereof, and according to the tenor and effect and by virtue of the ſaid agreement, he the ſaid defendant became, and then and there was wholly releaſed, exonerated, and diſcharged of and from the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and alſo of and from all damages or ſums of money thereupon due, owing, or accrued, to wit, at Weſtminſter aforeſaid; and this, &c. wherefore, &c. if, &c. 3d Plea, a ſet off for five hundred pounds paid, lent, had, and received, &c. J. MINGAY.

FIRST General Iſſue. And for further plea in this behalf, the ſaid Samuel, by leave of, &c. ſays [*actio non*]; becauſe he ſays, that the ſaid Samuel, at the time of the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, was under the age of twenty-one years, to wit, of the age of twenty years and no more, to wit, at, &c. in, &c.; and this, &c.; wherefore, &c.; and for further plea in this behalf, the ſaid Samuel, by like leave, &c. ſays [*actio non*]: becauſe he the ſaid Samuel ſays, that he the ſaid Samuel, after the making of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, to wit, on, &c. at, &c. was indebted to the ſaid Edward in the ſum of ſixty-two pounds of, &c. upon or by virtue of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, and no more, and alſo to one A. B. in the ſum of two hundred and thirty-eight pounds of, &c. making together the ſum of three hundred pounds; and he the ſaid being ſo indebted to the ſaid Edward and A. B. afterwards, to wit, on, &c. at, &c. at the ſpecial inſtance and requeſt of the ſaid Edward and A. B. ſigned and ſealed, and as his act and deed ſigned and delivered a certain deed or inſtrument called a warrant of attorney, to confeſs judgment, bearing date the day and year laſt aforeſaid, directed to certain perſons therein named, as being attornies of his majeſty's court of king's bench at Weſtminſter reſpectively, or to any other attorney of the ſame court, and thereby impowered them, or any or either of them, or any other

Plea. 1ſt, *Non aſſumpſit*. 2d, infancy. 3d, that the defendant was indebted to the plaintiff in 62l. and no more, and to one A. B. in 238l. and that at their joint requeſt he gave them a warrant of attorney to confeſs a judgment, which the plaintiff received in full ſatisfaction of his debt, and afterwards entered up judgment thereon.

other attorney as aforesaid, to appear for him the said Samuel, in his said majesty's court of king's bench at Westminster, as of Hilary term then last past, or any other subsequent term, and to receive a declaration against him the said Samuel, at the suit of the said Edward and A. B. in a plea of debt, for the sum of three hundred pounds (of which sum of three hundred pounds the sum of sixty-two pounds is due and owing from the said Samuel to the said Edward, was part and parcel) and to suffer judgment to go against him in such suit for the said sum of three hundred pounds by default or otherwise, and then and there, at the said instance and request of them the said Edward and A. B. then and there delivered the said deed or instrument, so executed by him the said S. as aforesaid, in full satisfaction and discharge of the said sum of money so then due and owing to them the said Edward and A. B. respectively as aforesaid, and which said deed or instrument called a warrant of attorney, to confess judgment, they the said Edward and A. B. then and there accepted, had, and received of and from the said Samuel, in full satisfaction and discharge of the said several sums of money so due and owing from the said S. to the said Edward and A. B. respectively as aforesaid: And the said S. further says, that the said deed or instrument called a warrant of attorney to confess judgment, so being executed, delivered, and accepted in manner and on the occasion aforesaid, they the said Edward and A. B. afterwards, to wit, on, &c. at, &c. caused the said judgment to be entered up of record in the said court of king's bench at Westminster against the said Samuel, as of the term of St. Hilary aforesaid, in the twenty-sixth year of the reign of our said lord the king, for the said sum of three hundred pounds so due and owing to the said Edward and A. B. respectively as aforesaid (of which said sum of three hundred pounds the said sum of sixty-two pounds so due and owing from the said S. to the said Edward, was part and parcel), as also for sixty-three shillings which were awarded to the said Edward and A. B. in and by the said court of king's bench, for their damages by them sustained, as well on occasion of the detention of that debt as for their costs and charges by them about their suit in that behalf expended, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself, more fully appears: And the said Samuel further says, that the said judgment still remains in the said court of our said lord the now king, before the king himself, in full force, strength, and effect, not set aside, reversed, or any way annulled or made void: And the said Samuel avers, that no more money was due and owing from the said Samuel to the said Edward, upon or by virtue of the said several promises and undertakings in the said declaration mentioned, than the said sum of sixty-two pounds, to wit, at, &c.; and this, &c.: wherefore, &c. (Set off for meat, drink, board, washing, and lodging.)

AND

ACCOUNT STATED.

CRANE *at the ſuit of* WALKER. AND the ſaid William, by Robert Lawleſs, his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid Benjamin ought not to have or maintain his aforeſaid action againſt him, becauſe he ſays, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the day of exhibiting the bill of the ſaid Benjamin in the ſuit, to wit, the ſecond day of November in the ſaid year of Our Lord 1790, at Weſtminſter aforeſaid, a certain account was had and ſtated by and between the ſaid Benjamin and the ſaid William, of and concerning the ſaid ſeveral ſums of money in the ſaid declaration mentioned; and upon that account the ſaid William was then and there found to be in arrear and indebted to the ſaid Benjamin in the ſum of nineteen pounds ten ſhillings and ſevenpence of lawful money of Great Britain, and no more; for which ſaid ſum of nineteen pounds ten ſhillings and ſevenpence he the ſaid William then and there made and delivered to the ſaid Benjamin his certain promiſſory note in writing, with his own hand thereunto ſubſcribed, bearing date the ſame day and year laſt aforeſaid, whereby the ſaid William then and there promiſed to pay, ſix months after the date thereof, to the ſaid Benjamin or his order, the ſum of thirteen pounds ten ſhillings and ſevenpence for value received: And the ſaid William in fact ſaith, that the ſaid Benjamin afterwards, to wit, on the ſecond day of November in the year laſt aforeſaid, at Weſtminſter aforeſaid, by his certain indorſement in writing on the ſaid laſt mentioned note, ordered and appointed the contents thereof to be paid to one Peter Wiggins or his order, for value received, and then and there delivered the ſaid note ſo indorſed, to the ſaid Peter Wiggins; by reaſon whereof, and by force of the ſtatute in ſuch caſe made and provided, the ſaid William became liable to pay, and ſtill is liable to pay, to the ſaid Peter Wiggins, the ſaid ſum of nineteen pounds ten ſhillings and ſevenpence, according to the tenor and effect of the ſaid note, to wit, at Weſtminſter aforeſaid, and this the ſaid William is ready to verify; wherefore he prays judgment if the ſaid Benjamin ought to have or maintain his aforeſaid action thereof againſt him, &c.

Plea to an action againſt the indorſee of a bill of exchange at the ſuit of the indorſee, that plaintiff and defendant ſtated accounts concerning the cauſes of action mentioned in declaration, and defendant was found in arrears, and gave plaintiff a negotiable promiſſory note for the balance, which plaintiff indorſed away before action brought, whereby defendant is liable to the indorſee.

And the ſaid Benjamin, as to the ſaid plea of the ſaid William by him above pleaded in bar, ſays, that he the ſaid Benjamin, by reaſon of any thing therein contained, ought not to be barred from having and maintaining his aforeſaid action thereof againſt the ſaid William, becauſe, proteſting that the ſaid plea and the matters therein contained in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law to bar the ſaid Benjamin from having and maintaining his ſaid action againſt the ſaid

Replication thereto.

ſaid William; proteſting alſo, that the ſaid William was and is indebted to the ſaid Benjamin in more money than nineteen pounds [illegible] and ſevenpence in the ſaid plea mentioned, upon the ſeveral cauſes of action in the ſaid declaration mentioned, to wit, in the ſeveral ſums of money in the ſaid declaration mentioned; proteſting alſo, that he the ſaid Benjamin did not indorſe the ſaid note in the ſaid plea mentioned, or order the contents thereof to be paid to the ſaid Peter Wiggins in the ſaid plea mentioned, for replication thereto, he the ſaid Benjamin ſays, that the ſaid William did make and deliver to the ſaid Benjamin the ſaid note in the ſaid plea mentioned, in manner and form as the ſaid William hath above in his ſaid plea in that behalf alledged; and this he the ſaid Benjamin prays may be enquired of by the country, &c.

ANOTHER ACTION PENDING.

Plea thereto. *Auter* action pending for the ſame promiſes.

KENDRICK *againſt* PRICE, one, &c.

AND the ſaid Edward, in his own perſon, comes and defends the wrong and injury, when, &c. and ſays, that he ought not to be compelled to anſwer the declaration in this behalf, becauſe he ſays, that the bill of the ſaid Samuel by him above exhibited againſt the ſaid Edward in this behalf, was exhibited againſt him by the ſaid Samuel in the court of our lord the king of the bench here in this ſame Hilary term, and not before, to wit, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, and that heretofore, to wit, in Michaelmas term laſt paſt, in the twenty-eighth year of the reign of our lord the now king, the ſaid Samuel impleaded the ſaid Edward in the court of our lord the king before the king himſelf, then and ſtill being held at Weſtminſter in the ſaid county of Middleſex, and then in the ſaid court of our ſaid lord the king, before the king himſelf, exhibited his certain other bill againſt the ſaid Edward, in a plea of treſpaſs upon the caſe, of and upon the non-performance of the very ſame identical promiſes and undertakings in the ſaid bill and declaration of the ſaid Samuel in this preſent ſuit mentioned, then and there, by his ſaid bill ſo by him exhibited in the ſaid court of our ſaid lord the king before the king himſelf, againſt the ſaid Edward, complaining that whereas [here ſet out the whole of the declaration, which in this caſe was on a promiſſary note]; and therefore he prayed relief, &c. as by the record and proceedings thereof ſtill remaining in the ſaid court of our ſaid lord the king, before the king himſelf, more fully appears: And the ſaid Edward further ſays, that the ſaid Samuel, the plaintiff in the ſaid former ſuit, and the ſaid Samuel in the preſent ſuit, is one and the ſame perſon and not divers or dif-

different perſons; and the ſaid Edward, the defendant in the ſaid former ſuit, and the ſaid Edward, the defendant in this preſent ſuit, is one and the ſame perſon, and not divers or different perſons; and that the ſeveral cauſes of action mentioned and contained in the ſaid bill in the ſaid former ſuit, and the ſaid ſeveral cauſes of action mentioned and contained in the ſaid bill and declaration in this preſent ſuit, are the very ſame identical cauſes of action, and not divers, different, or other cauſes of action, and that the ſaid former ſuit ſo by the ſaid Samuel brought and proſecuted againſt him the ſaid Edward in the ſaid court of our ſaid lord the king, before the king himſelf, as aforeſaid, was, at the time of the exhibiting of the bill of the ſaid Samuel in this preſent ſuit, and ſtill is depending in the ſaid court of our ſaid lord the king, before the king himſelf, not diſcontinued, tried, or determined; and this, &c.; wherefore, &c. if he ought to be compelled to anſwer to the declaration of the ſaid Samuel in this preſent ſuit, &c. GEO. HILL.

Replication to the laſt plea.

And the ſaid Samuel ſays, that by reaſon of any thing by the ſaid Edward above in pleading alledged, he the ſaid Edward to the ſaid declaration of the ſaid Samuel, ought not to be compelled to anſwer, becauſe he ſays, that true it is that the ſaid Samuel did, in Michaelmas term, in the twenty-eighth year of, &c. implead the ſaid Edward in the ſaid court of our ſaid lord the king, before the king himſelf, the ſaid court then and ſtill being at Weſtminſter aforeſaid in the ſaid county of Middleſex, and then, in the ſaid court of our ſaid lord the king, before the king himſelf, exhibited his certain bill againſt the ſaid Edward in a certain plea of treſpaſs on the caſe, in manner and form as the ſaid Edward hath in and by his ſaid plea by him above pleaded alledged; but the ſaid Edward further ſays, that afterwards, and long before the ſaid Samuel exhibited his ſaid bill in this ſuit, to wit, in Michaelmas term aforeſaid, the ſaid Samuel came into the ſaid court of our ſaid lord the king, before the king himſelf, the ſame court then and ſtill being held at Weſtminſter in the ſame county of Middleſex, and defended the wrong and injury, &c. and prayed judgment of the ſaid bill ſo exhibited in the former ſuit, becauſe that the ſaid Edward was not, nor ever had been, one of the attornies of the court of our ſaid lord the now king, before the king himſelf, as the ſaid Samuel had in and by his ſaid bill in the ſaid plea mentioned alledged, which ſaid allegation he the ſaid Edward was ready to verify; wherefore he the ſaid Edward prayed judgment of the ſaid bill of the ſaid Samuel, and that the ſame might be quaſhed: And the ſaid Samuel further ſays, that he the ſaid Samuel afterwards, and before the exhibiting of the ſaid bill of the ſaid Samuel in this preſent ſuit, to wit, in Michaelmas term aforeſaid, freely in the ſaid court of our ſaid lord the king, before the king himſelf, the ſaid court then and ſtill being at Weſtminſter aforeſaid in the ſaid county of Middleſex, acknowledged that he could

could not deny the said allegation to the said plea of the said Samuel, exhibited by him as aforesaid in the said court of our said lord the king, before the king himself, for the cause aforesaid, in and by the said plea of the said Edward by him thereto above made alledged, but admitted the same to be true; and thereupon it was considered, in and by the said court of our said lord the king before the king himself, that the said bill of the said Samuel by him against the said Edward exhibited to the court of our said lord the king, before the king himself, should be quashed, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself at Westminster aforesaid, more fully appears; without this, that the said former suit so by the said Samuel brought and prosecuted against him the said Edward in the said court of our said lord the king, before the king himself, was at the time of exhibiting of the bill of the said Samuel in this present suit depending in the said court of our said lord the king, before the king himself, not discontinued, tried, or determined; and this, &c.: wherefore, &c.; and that the said Edward, to the aforesaid declaration of the said Samuel, may answer, &c.

T. C. KIRBY.

Rejoinder to last replication, *nul tiel* record.

And the said Edward saith, that he, by reason of any thing by the said Samuel above in pleading alledged ought not to be compelled to answer to the declaration aforesaid of the said Samuel, because he says, that there is not any such record of the aforesaid judgment remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, as the said Samuel hath above in his said plea to by him above pleaded, by way of reply in that behalf alledged, and of this he the said Samuel puts himself upon the judgment of the court here, and thereupon the said Samuel is commanded by the said court here that he produces the said record, if any such there be, before the justices of our said lord the king of the bench at Westminster, in fifteen days of Easter, and that he fail not at his peril, the same day is given to the said Edward there, &c.

GEORGE HILL.

Plea of prior action depending at the suit of plaintiffs, bankrupts, before they become bankrupts.

FERON, *at the suit of* &c.

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that said plaintiff, *actio non*, because he saith, that after the making of the said promises and undertakings in said declaration mentioned, and before said T. D. and J. W. became bankrupts as aforesaid, to wit, on Monday next after the morrow of All Souls in Michaelmas term, in the twenty first year of the reign of our lord the now king, before our lord the now king at Westminster, came said T. D. and J. W. by C. D. their attorney, and brought into the court of our lord the king, before the king himself then there, their certain bill against said defendant, being in the custody of, &c. in a plea of trespass

treſpaſs on the caſe on promiſes to ſaid T. D. and J. W. their damage of pounds, of, &c. for the not performing of the ſame identical promiſes and undertakings in ſaid declaration mentioned, and the ſaid T. D. and J. W. then and there found pledges for the proſecution of their ſaid bill, as by the record and proceedings thereof remaining in ſaid court of our ſaid lord the king, before the king himſelf now here (reference being thereto had) will more fully and at large appear: And ſaid defendant in fact further ſaith, that ſaid bill ſo proſecuted by ſaid J. D. and T. W. as aforeſaid, is ſtill depending in ſaid court of ſaid lord the king, before the king himſelf now here, in no wiſe abated, diſcontinued, ceaſed or determined, but the ſame is ſtill wholly undetermined; and this, &c.; wherefore, &c. if, &c.

V. LAWLESS.

GRANT *at the ſuit of* WATSON AND ANOTHER.

NON ASSUMPSIT. And for further plea in this behalf, the ſaid defendant, by leave, &c. ſaith, that the ſaid plaintiff *actio non*, because he the ſaid defendant on the next after in Term, in the year of the reign of his preſent majeſty King George the Firſt, before the ſaid lord the king himſelf, at Weſtminſter, in the county aforeſaid, came the ſame plaintiffs by their attorney, and brought into the ſaid court of our ſaid lord the king then there their certain bill againſt the ſaid defendant, being in the cuſtody, &c. for that whereas, &c. and there were pledges for the proſecution of the ſame, to wit, D. and R. R.; by which ſaid bill the ſaid plaintiffs complained againſt the ſaid defendant, being in the cuſtody, &c. for that whereas, &c. (recite the declaration in the original action, and mention the pledges): and afterwards, to wit, in that ſame court of in the year aforeſaid, the ſaid defendant, by her attorney, comes into the court of our ſaid lord the king, before the king himſelf, at Weſtminſter, and defended the wrong and injury when, &c. and ſaid, that, &c. (recite the plea); and the ſaid plaintiffs did the like, &c.; which ſaid iſſue ſo joined as aforeſaid, afterwards, to wit, on the day of in the year aforeſaid, at Weſtminſter aforeſaid, in the county of Middleſex aforeſaid, came on to be tried, was tried, by a jury of the ſaid county of Middleſex, before the right honourable William earl of Mansfield, his majeſty's chief juſtice aſſigned to hold pleas before the king himſelf, and the jurors of the ſaid jury being ſummoned, came to declare the truth of the matter within contained, and being choſen, tried, and ſworn, ſaid, that the ſaid defendant did not undertake and promiſe in manner as the ſaid plaintiff hath ſo complained againſt her the ſaid defendant: Therefore afterwards, to wit, in Michaelmas Term, in the year of the reign of our ſaid lord the now king, before the king himſelf, it was conſidered, that the ſaid plaintiffs ſhould take nothing by their bill aforeſaid, but that they and their pledges to proſecute ſhould be amerced for their falſe claim therein, and that the ſaid defendant ſhould

Plea, that obtained a verdict and judgment againſt the plaintiff in a prior action brought by the plaintiff againſt defendant for the ſame cauſe of action.

ſhould go thereof without delay: and it was further conſidered by the ſaid court of our ſaid lord the king here, that the ſaid defendant ſhould recover againſt the ſaid plaintiffs pounds for her coſts and charges by her about her defence in that behalf expended by the ſaid defendant, by the ſaid court of our ſaid lord the now king here, according to the form of the ſtatute in ſuch caſe made and provided, by her aſſent adjudged, &c. as by the record and proceedings thereof, now remaining in the ſaid court of our ſaid lord the now king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, may more fully appear; which ſaid judgment is ſtill in full force, vigour, and effect, not in the leaſt reverſed, vacated, annulled, or made void: And the ſaid defendant further ſaith, that the promiſes and undertakings in the bill and record aforeſaid in the ſaid former ſuit, and the ſaid promiſes and undertakings in the ſaid declaration in the now preſent ſuit, are the ſame cauſes of action, and not other or different cauſes of action; but the ſaid cauſes of action in the ſaid preſent declaration in the preſent ſuit are ſet out with ſome ſmall immaterial variances from the ſaid bill in the ſaid former ſuit, that the ſame in fact may ſeem to be different cauſes of action; and that the ſaid plaintiffs in the ſaid former ſuit and the ſaid the now plaintiffs, are one and the ſame perſons, and not other or different perſons, and the ſaid defendant, the defendant in the former action, and the ſaid defendant, the now defendant, are one and the ſame perſon, and not other or different perſons; and this the ſaid defendant is ready to verify: wherefore he prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action againſt him, &c. J. WARREN.

ARBITRAMENT.

Plea of ſubmiſſion to arbitration, and an award ſhewn, &c.

AND the ſaid Earl comes and defends the wrong and injury when, &c. and ſays (*actio non*); becauſe he ſaith, that after the making of the ſaid ſeveral promiſes and undertakings, and before the commencement of this ſuit, to wit, on, &c. at, &c. divers variances and controverſies had been had and moved, and were then depending, by and between the ſaid John and the ſaid Earl, for the ſettling and adjuſting of which ſaid ſeveral variances they the ſaid John and Earl, by two ſeveral writings obligatory, bearing date the ſame day and year, became reciprocally bound to each other in the penal ſum of pounds to be paid to each other, with conditions to the ſaid bond annexed to make void the ſame if the ſaid John and Earl, their reſpective heirs and aſſigns, did, &c. as by the ſaid ſeveral reſpective bonds and conditions, relation being thereunto reſpectively had, will more fully and at large appear: And the ſaid Earl in fact ſays, that the ſaid arbitrators above-named having taken upon themſelves the burthen of the arbitration aforeſaid betwixt the ſaid John and the ſaid Earl, and having deliberately conſidered what had been alledged

alledged and offered by each of the ſaid parties, afterwards, and within the ſaid time above limited for the making of their ſaid award, to wit, on, &c. at, &c. made their award in writing of and concerning the premiſes ſo referred, &c. as aforeſaid, under their hands, in writing, ready to be delivered to the ſaid parties; by which ſaid award, after making all allowances to the ſaid John, they the ſaid arbitrators found the ſaid John to be in arrear to the ſaid Earl in ſixty pounds: And therefore the ſaid arbitrators by their ſaid award awarded and ordered the ſaid John to pay to the ſaid Earl or his order the ſaid ſixty pounds in ten days after the date of the ſaid award, which has not yet been paid; and this, &c.: wherefore, &c. SAM. COX.

Preclidi non; becauſe proteſting as to the ſufficiency of the plea; proteſting alſo, that they the ſaid John and Earl did not become neceſſarily bound to each other by ſuch writing obligatory in manner and form as the ſaid Earl hath above in his ſaid plea alledged; proteſting alſo, that the ſaid arbitrators above-named did not take upon themſelves the burthen of the ſaid arbitration betwixt the ſaid John and the ſaid Earl in manner and form as, &c.: Nevertheleſs, for replication in this behalf the ſaid John ſays, that the ſaid arbitrators did not make any ſuch award or award concerning the premiſes as the ſaid Earl hath in and by his ſaid plea in that behalf alledged; and this he prays, &c. Replication, *quod nullum fecerunt arbitrationem.*

JUDGMENT RECOVERED.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid plaintiff, *actio non*; becauſe he ſaith, that the ſaid plaintiff heretofore, to wit, in term in the year of the reign of his preſent majeſty, impleaded him the ſaid defendant in his majeſty's court, before Alexander Lord Loughborough and his brethren, then his majeſty's juſtices of the bench at Weſtminſter, in a certain plea of treſpaſs on the caſe on promiſes to the ſaid plaintiff's damage of pounds, of and for the not performing of the very ſame identical promiſes and undertakings in the ſaid declaration mentioned, and ſuch proceedings were thereupon had in the ſaid court of our ſaid lord the king of the bench, in that plea that the ſaid plaintiff afterwards, to wit, in the very ſame term, in the year aforeſaid, by the conſideration and judgment of that court, recovered in the ſaid plea againſt the ſaid defendant pounds, which in and by the ſaid court of our ſaid lord the king of the bench in that plea were adjudged to him the ſaid plaintiff for his damages which he had ſuſtained, as well on occaſion of the not performing of thoſe very ſame identical Judgment recovered in C. P. pleaded to an action in B. R.

promiſes and undertakings in the ſaid declaration mentioned, as for his coſts and charges by him laid out about his ſuit in that behalf, whereof the ſaid defendant was convicted, as by the record and proceedings thereof ſtill remaining in the court of our lord the king of the bench at Weſtminſter aforeſaid, reference being thereunto had, more fully and at large appears; which ſaid judgment ſtill remains in its full force, ſtrength, and effect, not in the leaſt reverſed or made void; and this he the ſaid defendant is ready to verify by the ſaid record, wherefore he prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action thereof againſt him, &c.

Replication, *nul tiel* record to the above plea of judgment recovered.

And the ſaid plaintiff ſaith, that he by any thing by the ſaid defendant in his ſaid plea alledged, ought not to be barred from having his aforeſaid action thereof againſt the ſaid defendant; becauſe he ſays that there is not any ſuch record of the recovery aforeſaid in the ſaid plea of the ſaid defendant mentioned remaining of record in the ſaid court of our lord the king, (*a*) *before the king himſelf*, (*or of the bench at Weſtminſter*) as the ſaid defendant hath in and by his ſaid plea in that behalf above alledged; and this he the ſaid defendant is ready to verify, when, where, and in what manner this court ſhall order, direct, or appoint; and thereupon the ſaid defendant is commanded that he have the ſaid record here on , and that he ſail not on his peril; the ſame day is given to the ſaid plaintiff here, &c.

(*a*) This form of replication, with the alterations in (*a*), will do for Judgment recovered in either court.

That this replication may conclude with a verification when the record is ſaid to be of another court, vide 2. Wil. 173. 114.

Replication to a plea of *nul tiel record* in K. B. record in the ſame court.

AFTER the uſual anſwer to the fact of the plea, by affirming the exiſtence of the record, go on as follows: And this he is ready to verify by the ſaid record: and thereupon he prays, that the ſaid record, which is on roll of this next term, in the twenty-ſecond year aforeſaid, and numbered, may be ſeen and inſpected by the ſaid court here: and becauſe it is neceſſary and convenient that the ſaid record, if any ſuch there be, be inſpected by the ſaid court here before judgment is given in the premiſes a day, that is to ſay, next after is given to the ſaid parties to be before our lord the king at Weſtminſter to hear judgment thereon.

Vide, in addition to the authorities in Carth. 517. Rob. Entr. 204. where there is alſo the judgment, Herne's Plead. 278. 2. Lut. 1514. and the authorities therein cited.

Plea to *aſſumpſit* in K. B. judgment recovered in C. B. in ſame cauſe of ſame term with declaration.

AND now at this day, that is to ſay, on Friday next after the morrow of All Souls in this ſame term, until which day the ſaid

John,

John had leave to imparl to the ſaid bill, and then to anſwer the ſame, &c. as well the ſaid Philip, by his ſaid attorney, as the ſaid John, by Smith Nathaniel Blagrave and William Bedcott Latley, his attornies, do come before our lord the king at Weſtminſter; and the ſaid John defends the wrong and injury, when, &c. and ſaith, that the ſaid Philip Cawſton ought not to have or maintain his ſaid action thereof againſt him; becauſe he ſays, that after the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the term of the Holy Trinity now laſt paſt, the ſaid Philip, in the ſaid court of our lord the king of common bench, at Weſtminſter, in the county of Middleſex, impleaded the ſaid John in a certain plea of treſpaſs on the caſe upon the ſame identical promiſes and undertakings in the ſaid declaration mentioned, and ſuch proceedings were had thereon, that the ſaid Philip afterwards, to wit, in the ſame term of the Holy Trinity, by the conſideration and judgment of the ſaid court, recovered againſt the ſaid John the ſum of one hundred pounds, as well for his damages occaſioned by the non-performance of the ſame identical promiſes and undertakings in the ſaid declaration mentioned, as for his coſts and charges which he had been put and put in and about that ſuit in that behalf, whereof the ſaid John was convicted, as by the record and proceedings thereof, now remaining of record in the ſaid court of our ſaid lord the now king of common bench, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment now remains in full force and effect, and is in no wiſe reverſed or made void; and this he is ready to verify by the ſaid record: wherefore he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.

V. LAWES.

Replication; nul record.

And the ſaid Philip ſaith, that by reaſon of any thing by the ſaid John above in pleading alledged, he the ſaid Philip ought not to be barred from having his ſaid action thereof maintained againſt the ſaid John, becauſe he the ſaid Philip ſaith, that there is not any ſuch record of the judgment aforeſaid recovered by him the ſaid Philip againſt the ſaid John remaining in the court of the lord the king of the bench at Weſtminſter aforeſaid, as the ſaid John hath above in pleading alledged; and this he the ſaid Philip is ready to verify: wherefore he prays judgment, and his damages by reaſon of the premiſes to be adjudged to him, &c.

Rejoinder.

And the ſaid John ſays, that there is ſuch a record of the judgment aforeſaid recovered by the ſaid Philip againſt him the ſaid John remaining in the court of the lord the king of the bench at Weſtminſter, as he the ſaid John hath above in pleading alledged; and this he the ſaid John is ready to verify by the ſaid record: and thereupon a day is given to the ſaid John by the court of our ſaid lord the king now here, that he may produce the ſaid record before

our lord the king at Weſtminſter on next after at his peril: the ſame day is given to the ſaid parties to be there to hear the judgment of the court.

Judgment recovered in C. B. to ſtay in B. R.

AND the ſaid Mary, by John W. her attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid James ought not to have or maintain his aforeſaid action againſt her, becauſe ſhe ſays, that the ſaid James heretofore, that is to ſay, in Trinity Term, in the twenty firſt year of the reign of our lord the now king, impleaded the ſaid Mary in the court of our ſaid lord the king of the bench, at Weſtminſter, in the county of Middleſex aforeſaid, before Alexander lord Loughborough and his brethren, then his majeſty's juſtices of the bench aforeſaid, in a certain plea of treſpaſs upon the caſe upon promiſes, for the non-performance of the identical promiſes and undertakings in the ſaid declaration above ſpecified, and ſuch proceedings were thereupon had in that plea in the ſame court of our ſaid lord the king of the bench aforeſaid, that afterwards, that is to ſay, in the ſame Trinity Term, the ſaid James recovered againſt the ſaid Mary forty pounds, for the damages which he had ſuſtained, as well by reaſon of the non-performing the ſaid promiſes and undertakings ſo made by the ſaid Mary as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid Mary was convicted, as by the record and proceedings thereof, remaining in the ſaid court of our ſaid lord the king of the bench aforeſaid, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in full force and effect, not reverſed or annulled; and this ſhe is ready to verify by the ſaid record: wherefore ſhe prays judgment if the ſaid James ought to have or maintain his aforeſaid action thereof againſt her, &c.

W. BALDWIN.

Plea of judgment recovered.

AND the ſaid William Conniers, in his own proper perſon, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid William Brown ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſaith, that the ſaid William Brown heretofore, that is to ſay, in Eaſter Term now laſt paſt, impleaded the ſaid William Conniers in the court of our lord the king, before the king himſelf, at Weſtminſter, in the county of Middleſex, in a certain plea of treſpaſs on the caſe on promiſes, to the ſaid William Brown his damages of twenty pounds, for the not performing the very ſame identical promiſes and undertakings in the ſaid declaration mentioned; and ſuch proceedings were thereupon had in the ſaid court of our lord the king, before the king himſelf, in that plea, that the ſaid William Brown afterwards, to

wit

wit, in that very same Easter Term now last past, by the consideration and judgment of that court, recovered against the said William Conniers *twenty pounds, which in and by the said court of* our lord the king in that plea were adjudged to him the said William Brown for his damages which he had sustained, as well on occasion of the non-performing of those very same identical promises and undertakings mentioned in the said declaration, as for his costs and charges by him laid out about his suit in that behalf, whereof the said William Conniers was convicted, as by the record and proceedings thereof, still remaining in the court of our lord the king at Westminster aforesaid, reference being thereunto had, may more fully and at large appear, which said judgment still remains in full force, strength, and effect, not in the least reversed or made void; and this he is ready to verify by the said record: wherefore he prays judgment if the said William Brown ought to have or maintain his aforesaid action thereof against him, &c.

J C. Bolton.

Replication, *tiel record.*

And the said William Brown saith, that he, by reason of any thing by the said William Conniers in his said plea above alledged, ought not to be barred from having his said action maintained against the said Williams Conniers, because he saith, that there is no such record of the said judgment remaining in the said court of our said lord the king, before the king himself, as the said William Conniers hath in his pleading above alledged; and this he is ready to verify, when, how, and in what manner, the court shall order, &c.: and thereupon the said William Conniers is directed, that he have the record here on Wednesday next after three weeks from the day of the Holy Trinity at his peril, &c.; the same day is given to the said parties here, &c.

Imparlance. Plea of judgment recovered.

AND now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in this same term, until which day the said David had leave to imparl to the said bill, and then to answer the same, &c. as well the said Richard, by his said attorney, as the said David, by Benjamin Lloyd his attorney, do come before our lord the king at Westminster; and the said David defends the wrong and injury when, &c. and says, that the said Richard ought not to have or maintain his aforesaid action thereof against him, because he says, that the said Richard heretofore, to wit, in Hilary Term last past, impleaded the said David in the court of our lord the now king of the bench, at Westminster, before Sir William de Grey, knight, and his brethren, justices of our said lord the king at the court of the bench aforesaid, in a certain plea of trespass on the case upon promises, to the said Richard his damage of twenty pounds, of and for the not performing of the same identical promises and undertakings in the said declaration mentioned; and such

proceedings were thereupon had in the ſaid court of our ſaid lord the king of the bench aforeſaid, at Weſtminſter aforeſaid, in that plea, that he the ſaid Richard afterwards, that is to ſay, in that ſame Hilary Term, by the conſideration and judgment of that court, recovered againſt the ſaid David in that plea twenty pounds for his damages which he had ſuſtained, as well by occaſion of the not performing of the ſaid ſeveral identical promiſes and undertakings as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid David was convicted, as by the record and proceedings thereof, ſtill remaining in the ſaid court of our lord the king of the bench aforeſaid, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in its full force, ſtrength, and effect, not in the leaſt reverſed, made void, ſatisfied, or annulled; and this the ſaid David is ready to verify by the ſaid record: wherefore he prays judgment if the ſaid Richard ought to have or maintain his aforeſaid action thereof againſt him, &c.

G. MINGAY.

Replication, *nul tiel record.*

And the ſaid Richard ſays, that by reaſon of anything by the ſaid David above in pleading alledged, he the ſaid Richard ought not to be barred from having his ſaid action thereof maintained againſt the ſaid David, becauſe he the ſaid Richard ſays, that there is not any ſuch record of judgment aforeſaid recovered by him the ſaid Richard againſt the ſaid David remaining in the court of the lord the king of the bench, at Weſtminſter aforeſaid, as the ſaid David hath above in pleading alledged; and this he the ſaid Richard is ready to verify: wherefore he prays judgment, and his damages by reaſon of the premiſes to be adjudged to him, &c.

Rejoinder.

And the ſaid David ſaith, that there is ſuch a record of judgment aforeſaid recovered by the ſaid Richard againſt him the ſaid David remaining in the court of the lord the king of the bench at Weſtminſter aforeſaid, as he the ſaid David hath above in pleading alledged; and this he the ſaid David is ready to verify by the ſaid record: and thereupon a day is given to the ſaid David, by the court of our ſaid lord the king now here, that he may produce the ſaid record before our lord the king at Weſtminſter, on next after at his peril: the ſame day is given to the ſaid parties to be there to hear the judgment of the court.

Plea to a declaration, a judgment recovered.

FIRST, General iſſue; *non aſſumpſit* to the whole declaration. 2d, As to promiſes and undertakings in the ſaid firſt eight Counts, defendants plead a judgment recovered in Eaſter Term, the twenty-fifth of George the Third, againſt defendants, as ſurvivors of A. B. 3d, As to all the promiſes in the declaration, a ſet off of monies due to the defendants.

And

Replication to new assignment, admits the judgment, but that the action was brought for a different cause.

And the said plaintiff as to the said plea of the said defendants by them secondly above pleaded in bar as to all the promises and undertakings in the said first eight Counts of the said declaration mentioned, says, *precludi non*, because he says, that although true it is that he the said plaintiff, in the term of St. Hilary, in the twenty-fifth year of, &c. did implead the said defendants, as such survivors as aforesaid, in the said court of our said lord the king of his exchequer, before the barons of the said court, in a certain plea of trespass on the case upon promises, for the not performing certain promises and undertakings; and that such proceedings were thereupon had in that plea, in the same court of our said lord the king of his exchequer aforesaid, that afterwards, to wit, in the term of Easter, in the said twenty-fifth year of, &c. he the said plaintiff recovered against the said defendants, by the judgment and consideration of the same court, five hundred and two pounds, in and by the said court adjudged to him for his damages which he had sustained as well by reason of the not performing the said promises and undertakings as for his costs and charges by him about his suit in that behalf expended; whereof the said defendants were convicted, as by the record and proceedings thereof, remaining in the said court of our said lord the king of his exchequer, at Westminster aforesaid, more fully appears, and that the said judgment still remains in full force and effect, not reversed, annulled, defeated, or avoided: Yet for replication in this behalf the said plaintiff says, that the said several promises and undertakings for which the said plaintiff impleaded the defendants, and recovered damages, as in the said record mentioned, were not, nor was, nor are, nor is, any or either of them, the same identical promises and undertakings as in the said eight Counts of the said declaration of the said plaintiff above are mentioned, but are other and different promises and undertakings than in the said first eight Counts of the said declaration mentioned, and whereof the said plaintiff has now impleaded the said defendants in that behalf, and above in his said declaration in that behalf complained against them: For that the said plaintiff has now impleaded them: for that whereas in the lifetime of the said A. B. that is to say, on, &c. at, &c. they the said A. B. and defendants were indebted to the said plaintiff in the sum of one thousand pounds, other and different than the sum in the said record mentioned, of lawful money of Great Britain, for other and different work and labour, care, skill, diligence, journies, and attendances, than in the said record is mentioned, of the said Richard before that time done, performed, and bestowed, by the said Richard, as an attorney and solicitor for the said A. B. and defendants, in and about the prosecuting, soliciting, and defending, divers causes, suits, and other businesses, for the said A. B. and defendants, on their retainer, and at their like special instance and request, and for other and different money paid, laid out, and expended, than the money in the said record mentioned, by the said Richard, at the like special instance and request of the said A. B. and defendants,

(a) For plea to new assignment, see Set off, post 163.

in and about the profecuting, ſoliciting, and defending of the cauſes, ſuits, and buſineſſes laſt-mentioned, and for the fees of the ſaid plaintiff due and of right payable to him the ſaid plaintiff in and about the premiſes; and that being thereupon indebted as laſt aforeſaid, they the ſaid A. B. and defendants, in the lifetime of the ſaid A. B. in conſideration thereof, afterwards, to wit, on, &c. at, &c. took upon themſelves, and then and there faithfully promiſed the ſaid Richard that they the ſaid A. B. and defendants would well and truly pay to the ſaid plaintiff the ſaid laſt mentioned ſum of one thouſand pounds, when they the ſaid defendants and A. B. ſhould be thereunto afterwards requeſted: And that whereas afterwards, and in the lifetime of the ſaid A. B. that is to ſay, on, &c. at, &c. in conſideration that the ſaid plaintiff had before that time done, performed, beſtowed, and taken, other and different work and labour, care, ſkill, diligence, journies, and attendances, than in the ſaid record mentioned, as an attorney and ſolicitor for the ſaid A. B. and defendants, on their retainer, and at their like ſpecial inſtance and requeſt, in and about the proſecuting, defending, and ſoliciting, divers other cauſes, ſuits, and other buſineſſes, for the ſaid A. B. and defendants: and that he the ſaid plaintiff had alſo paid, laid out, and expended, divers other ſums of money, other and different than in the ſaid record mentioned, in and about the proſecuting, defending, and ſoliciting, of the ſaid laſt-mentioned cauſes, ſuits, and buſineſſes, they the ſaid A. B. and defendants took upon themſelves, and then and there faithfully promiſed to the ſaid plaintiff, that they would well and truly pay to the ſaid plaintiff ſo much money as he reaſonably deſerved to have for the ſaid laſt-mentioned work, &c. and alſo ſo much money as the ſaid plaintiff had paid, laid out, and expended, in and about the proſecuting, ſoliciting, and defending, the ſaid laſt mentioned cauſes, ſuits, and buſineſſes, and likewiſe as much money as was due and of right payable to the ſaid plaintiff for his fees in the ſaid laſt-mentioned reſpects, when the ſaid A. B. and defendants ſhould be thereunto requeſted: And the ſaid plaintiff in fact ſays, that he did reaſonably deſerve to have of the ſaid A. B. and defendants, in the lifetime of the ſaid A. B. for the work, &c. the further ſum of eight hundred pounds of, &c.; and that he the ſaid plaintiff paid, laid out, and expended, in and about the proſecuting, &c. the ſaid laſt-mentioned cauſes, &c. the further ſum of eight hundred pounds of, &c. and that there was and is due to him the ſaid plaintiff, for his fees due and of right payable to him the ſaid plaintiff in thoſe laſt-mentioned reſpects, the further ſum of eight hundred pounds, to wit, at, &c.; of which the ſaid A. B. and defendants, in the lifetime of the ſaid A. B afterwards, to wit, on, &c. there had notice (ſo go on new aſſigning the firſt eight Counts in the ſaid declaration, ſtating them to be for doing other buſineſs, and for other monies paid, &c. than thoſe for which plaintiff recovered in the ſaid former judgment, aſſigning the breach alſo to thoſe eight Counts, as in the declaration): and which ſaid laſt-mentioned promiſes and undertakings, ſo mentioned and ſet forth in the ſaid firſt eight Counts

Counts of the ſaid now declaration of the ſaid plaintiff, and for the non-performance whereof he the ſaid Richard has above in his ſaid declaration complained againſt the ſaid defendants, are other and different promiſes and undertakings than thoſe for which the ſaid plaintiff recovered damages, as in the ſaid record, and in the ſaid plea of them the ſaid defendants, by them ſecondly above pleaded in bar are mentioned; and this, &c.: wherefore, inaſmuch as the ſaid defendants have not anſwered the ſaid complaint of the ſaid plaintiff, as to the breach and non-performance of the ſaid promiſes and undertakings in the ſaid firſt eight Counts of the ſaid declaration mentioned, and ſo newly above aſſigned, he the ſaid Richard prays judgment, and his damages, by reaſon of the non-performance thereof, to be adjudged to him, &c. (Iſſue on plea of ſet-off.)

THO. WALKER.

OUTLAWRY.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid plaintiff (*actio non*); becauſe he ſaith that one Daniel Edwards, heretofore, to wit, in the year of the reign of his preſent majeſty, by an original writ impleaded the ſaid plaintiff by the name of, &c. in his preſent majeſty's court, before Sir William De Grey, knt. and his brethren, then his ſaid Majeſty's juſtices of the bench at Weſtminſter, in the county of Middleſex, (*or in the court of our lord the now king, before the king himſelf, the ſaid court then and there being held at Weſtminſter in the ſaid county of Middleſex*), in a plea of treſpaſs; and the ſaid plaintiff, becauſe he did not appear in his ſaid majeſty's court of the bench, or in the ſaid court of our ſaid lord the king, before the king himſelf, to anſwer to the ſaid D. E. in the plea aforeſaid, according to the laws and cuſtoms of this realm, was put in exigent to be outlawed in London, and for that afterwards, to wit, on , in the twelfth year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king of the bench, (*or before the king himſelf*) was outlawed in due form of law, at the ſuit of the ſaid Daniel Edwards, in the aforeſaid plea, and ſtill remains outlawed, as by the record and proceeding thereof in his ſaid majeſty's court of the bench at Weſtminſter aforeſaid, (*or in the ſaid court of our ſaid lord the king, before the king himſelf*), returned and now remaining, more fully appears; and this he the ſaid defendant is ready to verify by the record, wherefore he prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action againſt him the ſaid defendant.

Plea of Outlawry.

J. MORGAN.

This plea, with the alterations in *italic*, will do for either Counts.

This diſability may be taken advantage of by pleading it either in abatement or in

in bar, with this difference, that it may be pleaded in abatement in all cafes, but commonly be pleaded in bar where the ground or cauſes of action is forfeited, ſee Morg. Dig. 53, &c.; that it may be pleaded in bar in *aſſumpſit*, ſee 2. Vent. 282. 3. Let. 39. and other authorities, as in Morg. Dig. 53, 54.

Outlawry in K.P. to an action in K. B.

AND the ſaid defendant, by A. B. his attorney, comes, &c. (*actio non*); becauſe he ſays that one T. W. heretofore, to wit, in term, in the year of the reign of his preſent majeſty, by an original writ, impleaded the ſaid plaintiff by the name of, &c. in his preſent majeſty's court, before Sir William De Grey, knt. and his brethren, then his ſaid majeſty's juſtices of the bench at Weſtminſter, in the county of Middleſex, in a plea of treſpaſs; and the ſaid plaintiff, becauſe he did not appear in his ſaid majeſty's court of the bench to anſwer unto the ſaid T. W. in the plea aforeſaid, according to the laws and cuſtoms of this realm, was put in exigent to be outlawed in London, and for that reaſon, afterwards, to wit, on next after , in the year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king of the bench at Weſtminſter, was outlawed in due form of law, at the ſuit of the ſaid T. W. in the aforeſaid plea, and ſtill remains outlawed, as by the record and proceedings thereof in his ſaid majeſty's court of the bench, at Weſtminſter aforeſaid, returned, and now there remaining, more fully appears; and this, &c. by the ſaid record; wherefore, &c. if, &c. J. MORGAN.

PAYMENT.*

Plea to declaration in *aſſumpſit* for work and labour as a builder and repairing premiſes, that defendant did employ plaintiff; but that plaintiff employed one A. B. as his deputy, to ſuperintend the works; and that defendant, according to the directions of plaintiff, *paid* A. B. the money for the work.

TEASDALE *at ſuit of* READ. } FIRST, *non aſſumpſit*. Second, And for further plea, &c. (*actio non*); becauſe he ſays, that long before the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned the ſaid plaintiff was retained and employed in the way of his art or buſineſs of a builder by the ſaid defendant, to erect and build certain erections, edifices, and buildings, and to repair and amend certain other edifices and buildings, of and for him the ſaid defendant, to wit, at, &c.; and being ſo retained and employed as aforeſaid, he the ſaid plaintiff afterwards, and before the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and long before the ſuing forth, &c. againſt the ſaid defendant, appointed, commiſſioned, and deputed one J. P. who was then, and yet is a builder, to ſuperintend, direct, do, and perform, as well the ſaid buſineſs of him the ſaid defendant, as divers other affairs and buſineſs for him the ſaid plaintiff, to wit, at, &c.: And the ſaid defendant further ſays, that the ſaid J. P. being ſo appointed, &c. as aforeſaid, in manner and for the purpoſes aforeſaid, he the ſaid J. P. did accordingly, afterwards, and before the making of the ſeveral promiſes and undertakings in the ſaid declaration, and before the time of making the agreement hereafter mentioned, and alſo before the ſuing forth, &c. ſuperintend and direct the erecting and building of the ſaid erections and buildings, and the repairing

* See Set off, poſt 160.

pairing and amending the ſaid other erections and buildings of the ſaid defendant of and for him the ſaid plaintiff, to wit, at, &c.; and thereupon, afterwards, and after the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the ſuing forth, &c. to wit, on, &c. at, &c. a certain diſcourſe was had and moved between the ſaid defendant and the ſaid plaintiff of and concerning the ſaid premiſes, and alſo of and concerning the means by which the ſaid plaintiff ſhould be ſatisfied by the ſaid defendant for his labour, care, diligence, and expences in and about the ſaid premiſes; and upon that diſcourſe it was then and there, to wit, on, &c. at, &c. agreed, by and between the ſaid plaintiff and the ſaid defendant, that the ſaid defendant ſhould pay, or cauſe to be paid, to the ſaid J. P. the ſum of five hundred pounds, of lawful, &c. as and for a payment for and in behalf of and from him the ſaid plaintiff to the ſaid J. P. for money due and owing from the ſaid plaintiff to the ſaid J. P. and that on payment thereof he the ſaid defendant ſhould be wholly releaſed, exonerated, and diſcharged, of and from the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and alſo of and from all damages and ſums of money thereupon due, owing, or accrued: And the ſaid defendant in fact further ſays, that he, confiding in the ſaid agreement ſo made between him the ſaid defendant and the ſaid plaintiff in manner as aforeſaid, did afterwards, to wit, on, &c. at, &c. in purſuance of the ſaid agreement, and by and with the knowledge, privity, and conſent of the ſaid plaintiff, pay unto the ſaid J. P. the ſaid ſum of five hundred pounds in the ſaid agreement mentioned, and which ſaid ſum of five hundred pounds the ſaid J. P. then and there took, accepted, and received of and from him the ſaid defendant, as and for payment for and on behalf of and from him the ſaid plaintiff to him the ſaid J. P. for money due and owing from the ſaid plaintiff to the ſaid J. P. to wit, at, &c.; by means whereof, and according to the tenor and effect, and by virtue of the ſaid agreement, he the ſaid defendant then and there became and was wholly releaſed, exonerated, and diſcharged of and from the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; and alſo of and from all damages or ſums of money thereupon due, owing, or accrued, to wit, at, &c.; and this, &c. wherefore, &c. if, &c.

F. BULLER.

PERFORMANCE.

NOTES, ESQ. *at ſuit of* FULWOOD. } AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that he did not undertake or promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea as to the firſt promiſe and undertaking in

Plea of performance to the firſt Count as to repairs.

in the ſaid declaration mentioned, the ſaid defendant, by leave, &c. ſaith, that ſaid defendant (*actio non*); becauſe he ſaith, that the ſaid defendant did, upon the requeſt of the ſaid plaintiff, by him in that behalf made after the making of the ſaid promiſe and undertaking, and before the day of exhibiting, &c. to wit, on the firſt day of April A. D. 1770, to wit, at, &c. aforeſaid, put ſaid meſſuage, dovecote, barns, ſtables, coach-houſes, and all other the outhouſes with the appurtenances of and belonging to the ſaid farm in the ſaid declaration mentioned, into good, ſufficient, and tenantable repair, according to the tenor and effect of the ſaid promiſe and undertaking of the ſaid defendant, by him made in that behalf as aforeſaid; and of this he puts himſelf upon the country, &c. J. MORGAN.

N. B. A notice of ſet off was added for work and labour by defendant and his ſervants, and with bills, &c. materials found, goods ſold &c. bargained, &c. money laid out, lent, laid, and received, and an account ſtated.

I did doubt whether a plea of ſet off can extend to the 4th Count, as it ſounding merely in damages. I have therefore drawn a notice of ſet off: defendant may at the trial perhaps be let in to the proof of his demand againſt the whole of the plaintiff's action. J. MORGAN.

RELEASE.

[illegible] that the promiſes were made by the defendant and another, and not by the defendant alone, and that the plaintiff executed a releaſe to the defendant.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid plaintiffs, *actio non*; becauſe he ſays, that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned (if any ſuch were made), were and each and every of them was made by him the ſaid defendant, and one A. B jointly, and not by him the ſaid defendant ſolely; and that after the making of the ſaid promiſes and undertakings, and before the exhibiting the bill of the ſaid plaintiffs againſt him the ſaid defendant, to wit, on, &c. at, &c. the ſaid plaintiffs by their certain writing of releaſe then and there made by them the ſaid plaintiffs to the ſaid A. B. and ſealed with the ſeveral and reſpective ſeals of them the ſaid plaintiffs, and then and there delivered to the ſaid A. B. who is ſtill in poſſeſſion of the ſame for the cauſes therein mentioned and contained, did remiſe and releaſe unto the ſaid A. B. his heirs, executors, and adminiſtrators, the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and each and every of them, and all ſum and ſums of money thereon due, owing, or thereafter to become due, together with all and all manner of action and actions, cauſe and cauſes of action, ſuits, bills, bonds, writings, obligatory debts, dues, duties, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages, and demands whatſoever, both at law and in equity, or otherwiſe howſoever which they the ſaid plaintiffs then had, or which they their heirs, executors, or adminiſtrators ſhould or might

might at any time or times thereafter have claim, challenge, or demand for, or by reaſon or means of any matter, cauſe, or thing whatſoever, from the beginning of the world unto the day of the date of the ſaid deed or writing of releaſe, as by the ſaid deed or writing of releaſe will more fully appear: And this, &c. wherefore, &c. V. LAWES.

Replication, non eſt factum of the releaſe.

And the ſaid plaintiffs, as to the ſaid plea of the ſaid plaintiff by him above pleaded in bar, ſay, that they by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining their aforeſaid action thereof againſt him the ſaid defendant, becauſe proteſting that the ſeveral promiſes and undertakings in the ſaid declaration mentioned, were not, nor was any of them made by him the ſaid defendant, and one A. B. jointly, but by him the ſaid defendant ſolely: For replication in this behalf the ſaid plaintiffs ſay, that the ſaid writing of releaſe in the ſaid plea mentioned, is not the deed of them the ſaid plaintiffs: and this they pray may be enquired of by the county, and the ſaid defendant doth the like, &c.

Plea, that the promiſes, &c. were made by defendant and another, and not by defendant alone, and that plaintiff hath executed a releaſe to defendant's co-contractor.

GROOLY *at the ſuit of* ELLIS AND ANOTHER.

AND ſaid defendant by J. M. her attorney, comes and defends the wrong and injury, when, &c. and ſays, that ſaid plaintiffs, *actio non*; becauſe he ſaith, that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned (if any ſuch were made), were, and each and every of them was made by her ſaid defendant, and one William Strong, jointly, and not by her ſaid defendant ſolely, and that after the making of ſuch promiſes and undertakings, and before the exhibiting, &c. to wit, on the firſt day of January 1782, to wit, at London, &c. aforeſaid, the ſaid plaintiffs by their certain writing of releaſe, then and there made by ſaid plaintiffs to William Strong, and ſealed with the ſeveral and reſpective ſeals of them ſaid plaintiffs, and then and there delivered to the ſaid William Strong (who is ſtill in poſſeſſion of the ſame) for the conſiderations there in mentioned and contained, did remiſe and releaſe unto ſaid William Strong, his heirs, executors, and adminiſtrators, the ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned, and each and every of them, and all ſum and ſums of money thereon due and owing, or thereof to become due, together with all and all manner of action and actions, cauſe and cauſes of action, ſuit, bills, bonds, writings obligatory, debts, dues, duties, ſum or ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages, and demands whatſoever, both at law and in equity, or otherwiſe howſoever, which they ſaid plaintiffs then had, or which they, their heirs, executors, or adminiſtrators ſhould and might at any time or times hereafter have, claim, challenge, or demand for, or by reaſon or means of any more cauſe or thing whatſoever, from the beginning of the world unto the day of the date of ſaid deed

or

or writing of releaſe, as by ſaid deed or writing of releaſe will fully appear: And this ſaid defendant is ready to verify, wherefore, &c. if, &c. V. LAWES.

Replication to the laſt plea, *non eſt factum.*

ELLIS AND ANOTHER *againſt* GROOLY. } And ſaid defendant, as to ſaid plea of ſaid defendant by her above pleaded in bar ſay, that they, by reaſon of any thing in that plea alledged, ought not to be barred from having their aforeſaid action thereof againſt him ſaid defendant, becauſe proteſting that the ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned were not, nor was any of them made by her ſaid defendant, and one William Strong jointly, but her ſaid defendant ſolely: For replication in this behalf, ſaid plaintiffs ſay, that ſaid writing of releaſe in ſaid plea mentioned, is not the deed of them ſaid plaintiffs; and this they pray may be enquired of by the country, and ſaid defendant doth the like, wherefore, &c.

(a) Plea to *aſſumpſit* by executors, that their teſtator ſold to the plaintiff a cow for 7l. which at the time of his death was unpaid, and that the executors and the plaintiff agreed to *releaſe* each other, on condition of the defendant's paying the plaintiff fifteen pounds.

FIRST. General Iſſue. And for further plea in this behalf, the ſaid defendants by leave of, &c. *actio non*; becauſe they ſay the ſaid A. B. (the teſtator) in his life-time after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to wit, on, &c. at, &c. bargained, ſold, and delivered to the ſaid plaintiff, a certain cow of him the ſaid A. B. at and for a certain large price or ſum of money, to wit, at and for the price or ſum of ſeven pounds ſeven ſhillings, of lawful money of Great Britain, to be therefore paid by the ſaid plaintiff to the ſaid teſtator, which ſaid ſum of money at the time of his death was wholly in arrear and unpaid to him, and the ſaid defendants further ſay, that then and after the death of the ſaid A. B. and before the exhibiting the bill of the ſaid plaintiff, to wit, on, &c. at, &c. the ſaid ſum of ſeven pounds ſeven ſhillings being and then and there wholly remaining unpaid by the ſaid plaintiff to the ſaid defendants, as executors as aforeſaid of the ſaid A. B. it was agreed by and between the ſaid defendants as executors as aforeſaid, and the ſaid plaintiffs in manner following, that is to ſay, that the ſaid defendants as executors as aforeſaid, ſhould *releaſe* and diſcharge the ſaid plaintiff from the payment of the ſum of ſeven pounds ſeven ſhillings, ſo remaining due as aforeſaid, and ſhould pay to the ſaid plaintiff ſo much money, as together with the ſaid ſum of ſeven pounds ſeven ſhillings, ſo to be releaſed and diſcharged as aforeſaid, ſhould make up and amount to the ſum of twenty pounds, of, &c. for and in *full ſatisfaction* and diſcharge of the ſaid ſeveral promiſes and undertakings of the ſaid A. B. in his lifetime to the ſaid plaintiff made in the ſaid declaration mentioned; and the ſaid defendants as executors further ſay, that in purſuance of the ſaid agreement ſo made as aforeſaid, and long before the exhibiting of the bill of the ſaid plaintiffs, to wit, on, &c. at, &c. they the

(a) Pleas, &c. by Executors, ſee poſt; and ſee Accord and Satisfaction, and Payment, ante.

ſaid

ſaid defendants did releaſe and diſcharge the ſaid plaintiff from the payment of the ſaid ſum of ſeven pounds ſeven ſhillings ſo remaining unpaid as aforeſaid, and did pay him a large ſum of money, to wit, the ſum of twelve pounds thirteen ſhillings, of, &c. which ſaid ſum of twelve pounds thirteen ſhillings, together with the ſaid ſeven pounds ſeven ſhillings ſo releaſed as aforeſaid, amounted to the ſaid ſum of twenty pounds, which ſaid ſum of twelve pounds thirteen ſhillings ſo paid as aforeſaid, together with the ſaid releaſe and diſcharge of the ſaid ſum of ſeven pounds ſeven ſhillings, he the ſaid plaintiff then and there accepted and received of and from the ſaid defendants as executors as aforeſaid, for and in full ſatisfaction and diſcharge of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and this, &c. wherefore, &c.

Drawn by MR. CROMPTON.

SET OFF.

FIRST, *Non Aſſumpſit*, and notice of ſet off. Take notice that the above named defendant at the trial of this cauſe, &c. (in common form), that is to ſay, in the ſum of ſix pounds of, &c. under and by virtue of an agreement before that time made between the ſaid plaintiff and the ſaid defendant, whereby it was agreed, that in conſideration that the ſaid defendant, at the ſpecial inſtance and requeſt of the ſaid plaintiff, had before that time recommended the ſaid plaintiff to and had procured for him certain orders for making ſhoes, he the ſaid plaintiff being a ſhoemaker, to be by him the ſaid plaintiff executed and performed, at and for a large price or ſum to be therefore paid to him for the ſame, he the ſaid plaintiff ſhould pay to the ſaid defendant, and the ſaid plaintiff then and there undertook, and faithfully promiſed the ſaid defendant to pay him the ſum of two ſhillings in the pound for every pound to be by him the ſaid Samuel received for the price of the ſaid ſhoes, and for the making of the ſame: And the ſaid defendant in fact ſays, that he the ſaid plaintiff did, in conſequence of the recommendation of the ſaid defendant, and of his procuring for him the ſaid orders, receive a large ſum of money, to wit, the ſum of ſixty pounds, of, &c. for the making of the aforeſaid ſhoes, whereby he the ſaid plaintiff became liable to pay to the ſaid plaintiff the ſum of ſix pounds, being at and after the rate of two ſhillings in the pound for each and every pound ſo received by the ſaid plaintiff for the making of the ſaid ſhoes, whereby he the ſaid plaintiff became and was indebted to her the ſaid defendant in the ſaid ſum of ſix pounds as aforeſaid; and alſo in the further ſum of, &c. (Money lent, &c.)

Drawn by MR. GRAHAM.

Plea (to a declaration for work and labour and common Counts) ſet, *non aſſumpſit*, and notice of ſet off.

AND

To an action of assumpsit, plea of set off for work and labour, &c. as a factor.

AND the said W. W. by J. P. his attorney, comes and defends the wrong and injury, when, &c. and saith that he did not undertake and promise in manner and form as the said W. B. above complains thereof against him, and of this he puts himself upon the country, and the said W. B. doth the same, and the said W. by leave of the Court first had and obtained, according to the form of the statute in such case made and provided, further says, that the said Worthington ought not to have or maintain his said action against him, because he says, that the said Worthington, on the day of exhibiting his said bill against the said W. to wit, on the twenty-third of January, A. D. 1762, at Topsham, in the county aforesaid, was and now is indebted unto the said William in the sum of five hundred pounds, of lawful money of Great Britain, for divers goods, wares, and merchandizes, and also in the further sum of five hundred pounds for money lent and advanced, and also money had and received, money laid out, and expended, &c. and also in the further sum of five hundred pounds of like lawful money for work and labour, service, care, diligence, and attendance of the said William, by him the said William, for and at the like instance and request of the said Worthington, and in and about his lawful business and affairs, before that time done and performed, used, undertaken, exercised, and employed: And also in the further sum of five hundred pounds of like lawful money, for other work and labour of the said William as the factor, agent, or servant of the said Worthington, before that time done and performed at the like instance and request of the said Worthington, and also (account stated), which said several sums of five hundred pounds, &c. amounting in the whole to the sum of three thousand five hundred pounds, and on the day of the exhibiting of the said bill of the said Worthington, were and still are due and owing from the said Worthington to the said William: And the said William further saith, that he hath been, and still is ready, and doth now offer, according to the form of the statute in this case made and provided, to *set off* against the money which in and by this suit shall appear to be due from him the said W. to him the said Worthington, so much of the said three thousand five hundred pounds as was aforesaid due to him the said W. as will satisfy such money as shall appear to be due to the said Worthington: And this, &c. J. DUNNING.

as a factor.

WITTEY *at suit of* JAQUES.

AND the said Robert Wittey, by John Wybourn his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said R. J. hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf, the said defendant, by leave, &c. says (*actio non*); because he says that the said plaintiff, before and at the time of the exhibiting of the said bill of the said plaintiff's, was and still is indebted to the said defendant

ant in more money than is due and owing from ſaid defendant to ſaid plaintiff upon the ſeveral promiſes and undertakings in ſaid declaration mentioned; that is to ſay, in the ſum of three hundred and forty pounds ten ſhillings, *upon a judgment*, and recovered by ſaid defendant againſt ſaid plaintiff, heretofore, to wit, in the term of the Holy Trinity, in the twenty ſecond year of the reign of our lord the now king, before the king himſelf, at Weſtminſter aforeſaid, in a plea of treſpaſs upon the caſe, upon promiſes, whereby it was conſidered by the ſaid court that the ſaid defendant ſhould recover againſt the ſaid plaintiff the ſaid ſum of three hundred and forty pounds ten ſhillings for his damages which he had ſuſtained, as well by occaſion of the non performance of ſeveral promiſes and undertakings then lately made by the ſaid plaintiff to the defendant, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid plaintiff was convicted, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king, before the king himſelf at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in full force and effect, not reverſed, annulled, diſcharged, or ſatisfied, and which ſaid ſum of money to be recovered by the ſaid defendant againſt ſaid plaintiff, or ſo much thereof as ſhall be neceſſary in that behalf, ſaid defendant hath been and now is ready to ſet off, and now offers to ſet off againſt the ſaid ſeveral ſums of money due and owing from ſaid defendant to ſaid plaintiff, by virtue of the ſeveral promiſes and undertakings in ſuch declaration mentioned, according to the form of the ſtatute in ſuch caſe made and provided; and this he ſaid defendant is ready to verify, wherefore he prays judgment if ſaid plaintiff ought to have or maintain his aforeſaid action thereof againſt him, &c. GEO. WOOD.

DECLARATION of Eaſter term, 29. Geo. 3. in *ſcd Pl. actus aſſumpſit* for fifty pounds, for a ſurgeon's bill, and common Counts; damages fifty pounds. Plea, Trinity term, 29. Geo. 3. rit, General iſſue; *non aſſumpſit*, and iſſue. 2d, And for further plea in this behalf the ſaid J. Wagner, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John Franklin ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſays, that the ſaid John Franklin before and at the time of the exhibiting of the bill of the ſaid John Franklin againſt the ſaid John Michael, was, and ſtill is indebted to the ſaid John Michael in more money than is due and owing from the ſaid John Michael to the ſaid John Franklin, upon the ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of fifty-one pounds ten ſhillings upon a judgment, heretofore, to wit, in the term of St. Michael, in the twenty-ninth year of the reign of our ſovereign lord the now king, obtained by the ſaid John Michael againſt the ſaid John Franklin, in the court of our lord the king, before the king himſelf, at Weſtminſter, in the county of Middleſex, in a plea of treſpaſs on the caſe, upon promiſes, &c.

Plea of debt on judgment, by way of ſet off; Replication, that ſince the recovery thereof and the plea pleaded, defendant levied the ſum due upon it, and diſcharged thereon.

promiſes, whereby it was conſidered by the ſaid court, that the ſaid John Michael ſhould recover againſt the ſaid John Franklin the ſaid fifty-one pounds ten ſhillings for his damages which he had ſuſtained, as well by reaſon of not performing of certain promiſes and undertakings then lately made by the ſaid John Franklin to the ſaid John Michael, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid John Franklin was convicted, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king, before the king himſelf, to wit, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in full force and effect, not reverſed, annulled, diſcharged, or ſatisfied; and which ſaid ſum of money ſo recovered by the ſaid John Michael againſt the ſaid John Franklin, or ſo much thereof as ſhall be neceſſary in that behalf, the ſaid John Michael always hath been, and now is ready and willing, and hereby offers to ſet off and allow to the ſaid John Franklin againſt the ſaid ſeveral ſums of money due and owing from the ſaid John Michael to the ſaid John Franklin, by virtue of the ſaid ſeveral promiſes and undertakings of the ſaid John Michael in the ſaid declaration mentioned, according to the form of the ſtatute in this caſe made and provided; and this the ſaid John Michael is ready to verify, wherefore he prays judgment if the ſaid John Franklin ought to have or maintain his aforeſaid action thereof againſt him, &c.

GEO. WOOD.

Replication.

FRANKLIN *verſus* WAGNER. } And the ſaid John Franklin, as to the ſaid plea of the ſaid John Wagner by him above pleaded in bar, ſays, that he by reaſon of any thing therein alledged, ought not to be barred from having and maintaining his aforeſaid action thereof againſt the ſaid John Wagner, becauſe he ſays, that though true it is that ſuch judgment as is therein mentioned was obtained againſt the ſaid John Franklin, yet he the ſaid John Franklin, according to the form and ſtatute in ſuch caſe made and provided, ſays, that after the obtaining of the ſaid judgment, and ſince the ſaid plea of the ſaid John Wagner, to wit, on the day of now laſt paſt, he the ſaid John Franklin did pay to the ſaid John Wagner the ſaid ſum of fifty-one pounds ten ſhillings by the ſaid judgment recovered, and in the ſaid ſecond plea above-mentioned to be due thereon, in full ſatisfaction and diſcharge of the ſaid judgment, to wit, at Weſtminſter aforeſaid, in the county aforeſaid; and this he the ſaid John Franklin is ready to verify, wherefore he prays judgment and his damages by him ſuſtained, by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings of the ſaid John Wagner in the ſaid declaration mentioned to be adjudged to him, &c.

It ſtrikes me on very great conſideration which I have given this caſe, that the defendant by levying the money ſince his plea due upon the judgment pleaded by way of ſet off, has put himſelf in the ſame ſituation as if he had not pleaded it at all; and that the plaintiff is competent to ſhew ſuch fact in his replication under the equity of the ſtat of 4 Ann. c. 16. ſ. 12. to the effect I have above ſtated. T. BARROW.

AND

AND the ſaid defendants, as to the ſaid plea of the ſaid plaintiffs, by him firſt above pleaded by way of new aſſignment, and in reply to the ſaid plea of the ſaid defendants by them ſecondly above pleaded in bar, ſay, that they did not undertake and promiſe in manner and form as the ſaid plaintiff hath above in his ſaid new aſſignment complained againſt them; and of this they put themſelves upon the country, &c.: And for further plea in this behalf, as to all the ſaid promiſes and undertakings in the ſaid new aſſignment mentioned, the ſaid defendants, by leave of, &c. ſay, *actio non*; becauſe they ſay, that the ſaid plaintiff now is, and at the day of making the ſaid new aſſignment was, indebted to the ſaid defendants in more money than is due and owing to him from them upon the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid new aſſignment mentioned, that is to ſay (ſet-off in uſual form for money paid, lent, &c.; account ſtated, &c.) ſo much of which ſaid ſeveral ſums of money ſo due and owing from the ſaid plaintiff to the ſaid defendants, as will be ſufficient to ſatisfy the ſaid plaintiff the damages which he hath ſuſtained by reaſon of the non-performance of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid new aſſignment mentioned, they the ſaid defendants will deduct and ſet off according to the form of the ſtatute in ſuch caſe made and provided; and this, &c.; wherefore, &c.

(a) Plea to a aſſignment. *Non aſſumpſit* 2d, a ſet-off.

(a) See replication —New aſſignment to a plea of judgment recovered, ante 151.

AND the ſaid George Bagno, by James Poarce his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid defendant ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that the ſaid plaintiff, before the commencement of this ſuit, to wit, in Hilary term now laſt paſt, in the court of our lord the king of the bench at Weſtminſter, in the ſaid county of Middleſex, before the right honourable ſir William Eyre, knight, and his companions, then juſtices of our lord the king of the bench aforeſaid, at Weſtminſter aforeſaid, came in their own proper perſons, and then and there, in the ſaid court, before the ſaid juſtices, duly taken and inrolled *for a juſt and true debt, acknowledged* themſelves to owe to the ſaid George the ſum of one thouſand pounds of lawful money of Great Britain, which they and each of them willed to be levied and made of their lands, goods, and chattels, as by the ſaid recognizance now remaining inrolled and aſſiled in the court of our ſaid lord the king of the bench at Weſtminſter aforeſaid, more fully appears; which ſaid recognizance ſtill remains wholly due, in full force and effect, not in any wiſe paid, ſet aſide, or ſatisfied, and which greatly exceeds the money due and owing to the ſaid plaintiffs on the ſeveral promiſes and undertakings in the ſaid declaration mentioned, to wit, at Weſtminſter aforeſaid, and from which the ſaid George is ready and willing to deduct and ſet off, according to the form of the ſtatute in ſuch caſe made and provided, the damage ſuſtained by the ſaid plaintiff by reaſon of the ſaid ſuppoſed promiſes and undertakings in the ſaid declaration mentioned,

Plea [illegible] recognizance entered into by the defendant in their own way of [illegible]

tioned, and which amount only to ſeven hundred and ſeventy-two pounds eight ſhillings and elevenpence, to wit, at Weſtminſter aforeſaid; and this he is ready to verify; wherefore he prays judgment if the ſaid plaintiff ought to have his aforeſaid action thereof maintained againſt him, &c. T. BARROW.

Set-off. AND the defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the plaintiff ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſaith, that the ſaid plaintiff, before and at the time of exhibiting of the bill (*or ſuing forth of the original writ*) of the ſaid plaintiff againſt him the ſaid defendant, to wit, at Weſtminſter aforeſaid, was, and from thence hitherto hath been, and ſtill is, indebted to the ſaid defendant in a much larger ſum of money than the money ſo due and owing from the ſaid defendant to the ſaid plaintiff, and whereof the ſaid plaintiff hath above complained againſt him the ſaid defendant, to wit, in the ſum of pounds of lawful money of Great Britain, for the work and labour, care and diligence, of the ſaid defendant before that time done, performed, and beſtowed by him the ſaid defendant in and about the buſineſs of the ſaid plaintiff, and for the ſaid plaintiff, and at his ſpecial inſtance and requeſt, and for meat, drink, waſhing, apparel, lodging, and other neceſſaries before that time found and provided by the ſaid , for one C. D. the daughter of the ſaid plaintiff, and at his the ſaid plaintiff's like ſpecial inſtance inſtance and requeſt, and for divers goods, wares, and merchandizes by the ſaid defendant before that time ſold and delivered to the ſaid plaintiff, at his like ſpecial inſtance and requeſt, and for money by the ſaid defendant before that time lent and advanced to the ſaid plaintiff, and at his like ſpecial inſtance and requeſt, and for other money by the ſaid defendant before that time laid out, expended, and paid for the ſaid plaintiff, at his like ſpecial inſtance and requeſt, and for other money by the ſaid plaintiff before that time had and received to the uſe of the ſaid defendant, and for other money before that time due and owing from the ſaid plaintiff to the ſaid defendant, upon an account ſtated between the ſaid plaintiff and the ſaid defendant; which ſaid ſum of money ſo due and owing from the plaintiff to the ſaid defendant exceeds the damages ſuſtained by the ſaid plaintiff, by reaſon of the not performing of the ſaid ſeveral promiſes and undertakings of the ſaid defendant in the ſaid declaration mentioned, and out of which ſaid ſum of money he the ſaid defendant is ready and willing, and hereby offers to ſet off and allow to the ſaid plaintiff ſo much money as the damages ſuſtained by the ſaid plaintiff, on occaſion of not performing the ſaid ſeveral promiſes and undertakings of him the ſaid defendant in the ſaid declaration mentioned, amount to; and this he the ſaid defendant is ready to verify: wherefore he prays judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action thereof againſt him, &c.

Drawn by MR. WARREN.

And

And the ſaid plaintiff ſaith, that he, by reaſon of any thing by the ſaid defendant in his ſaid plea above alledged, ought not to be barred from having and maintaining his aforeſaid action againſt him, becauſe he ſaith, that he the ſaid plaintiff was not, at the time of, &c. nor is now indebted to the ſaid defendant in manner and form as the ſaid defendant hath above in his ſaid plea alledged; and this he the ſaid plaintiff prays may be enquired of by the country, and the ſaid defendant doth the like, &c.; therefore, &c. Replication. Evans v. Pro. 2 T. R. 186.

RULE *at the ſuit of* WILSON, *adminiſtratrix.*

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid Martha, *actio non*, becauſe he ſaith, that he the ſaid defendant heretofore, to wit, in Eaſter term, in the third year of the reign of our lord the now king, impleaded plaintiff as adminiſtratrix in the court of our lord the king, before Sir Charles Pratt, knight, and his brethren, then his Majeſty's juſtices of the bench at Weſtminſter in the county of Middleſex, in a plea of treſpaſs on the caſe, then and there declaring by, &c. his attorney, againſt the ſaid plaintiff, as adminiſtratrix as aforeſaid in that plea whereas, &c. [here recite the declaration], and afterwards, to wit, in Trinity term in the third year aforeſaid, the ſaid plaintiff came into the ſaid court of our ſaid lord the king of the bench at Weſtminſter aforeſaid, by, &c. her attorney, and defended the wrong and injury, when, &c. and the ſaid, &c. [here recite the plea, which in this caſe was a judgment outſtanding, and *plene adminiſtravit præter*, &c.] and ſuch proceedings were thereupon had, that afterwards, that is to ſay in Michaelmas term, in the fourth year of the reign of our lord the now king, before Sir Charles Pratt, knight, and his companions, then his Majeſty's juſtices of the bench at Weſtminſter, the ſaid defendant, by the conſideration of the ſaid court, recovered, &c. (ſet forth the judgment), whereof the ſaid plaintiff, as adminiſtratrix in form aforeſaid, hath been convicted, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king of the bench aforeſaid, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in its full force, ſtrength, and effect, not in the leaſt paid, ſatisfied, reverſed, or made void: And the ſaid defendant further ſaith, that the monies recovered by the ſaid judgment, and now due and owing to the ſaid defendant, exceed the monies due and owing from the ſaid defendant to the ſaid plaintiff, as adminiſtratrix as aforeſaid, and for which the ſaid plaintiff hath above complained againſt the ſaid defendant, to wit, at, &c. aforeſaid, and that ſaid defendant is ready and willing, and hereby offers to ſet-off and allow to the ſaid plaintiff, as adminiſtratrix as aforeſaid, and of the damages aforeſaid, ſo recovered in form aforeſaid, all ſuch damages as the ſaid George, in his life-time, Plea of [illegible] Money due defendant judgment vered by gainſt the uff. as a ſtrangr See Peak plea as of money under a mens. rea by defend gainſt the

time, or the ſaid plaintiff, as ſuch adminiſtratrix as aforeſaid, have or hath ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, according to the form of the ſtatute in ſuch caſe lately made and provided; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Plea of ſet off for work and labour done by defendant.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that he did not undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.; and for further plea as to the firſt promiſe and undertaking in the ſaid declaration mentioned, the ſaid defendant, by leave, &c. ſaith, that the ſaid defendant, *actio non*; becauſe he ſaith, that the ſaid defendant did, upon the requeſt of the ſaid plaintiff by him in that behalf made, after the making of the ſaid promiſe, and before the day of exhibiting, &c. to wit, on the firſt day of April A. D. 1770, to wit, at, &c. aforeſaid, put the ſaid meſſuage, dove-cote, barns, ſtables, coach houſes, and all other the out-houſes, with the appurtenances, of and belonging to the ſaid farm in the ſaid declaration mentioned, into good, ſufficient, and tenantable repair, according to the tenor and effect of the ſaid promiſe and undertaking of the ſaid defendant by him made in that behalf as aforeſaid; and of this he puts himſelf upon the country, &c.

J. MORGAN.

Plea as to all the [illegible] except 11s. *tender* that, and with [illegible] of court, [illegible] to all the [illegible]ey, except 11s. tender-

AND the ſaid W. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to all the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, except as to the ſum of two pounds eleven ſhillings, parcel of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, ſays, that he did not undertake and promiſe in manner and form as the ſaid J. hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.; and as to the ſaid ſum of two pounds eleven ſhillings, parcel of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, the ſaid William ſaith, that the ſaid J. ought not to have or maintain his aforeſaid action thereof againſt him, to recover more or greater damages than the ſaid ſum of two pounds eleven ſhillings in this behalf, becauſe he ſaith, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as to the ſaid ſum of two pounds eleven ſhillings, parcel of, &c. and before the exhibiting of the bill of the ſaid J. againſt the ſaid W. to wit, on the ſecond day of March, in the year of Our Lord 1791 aforeſaid, at, &c. aforeſaid, he the ſaid W. was ready and willing, and then and there tendered and offered to pay to the ſaid J. to accept the ſaid ſum of two pounds

pounds eleven ſhillings, parcel of, &c. which of the ſaid W. he the ſaid J. then and there wholly refuſed: And the ſaid W. in fact further ſaith, that he the ſaid W. hath always, from the time of the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as to the ſaid ſum of two pounds eleven ſhillings, parcel, &c. hitherto, to wit, at, &c. aforeſaid, been ready to pay, and ſtill is there ready to pay to the ſaid J. the ſaid ſum of two pounds eleven ſhillings, parcel, &c. and now brings the ſame here into court, ready to be paid to the ſaid J. if he will accept the ſame; and this he is ready to verify: wherefore he prays judgment if the ſaid J. ought to have or maintain his ſaid action againſt him, to recover more or greater damages than the ſaid ſum of two pounds eleven ſhillings on this behalf; and for further plea as to the ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, except as to the ſaid ſum of two pounds eleven ſhillings, parcel, &c. the ſaid William, by leave, &c. *actio non*; becauſe he ſays, that he the ſaid J. before and at the time of exhibiting the bill of the ſaid J. againſt the ſaid W. was, and from thence hitherto hath been, and ſtill is, indebted to the ſaid William in a large ſum of money, to wit, the ſum of pounds of, &c. for money by the ſaid William before that time lent and advanced to, and paid, laid out, and expended, for the ſaid J. at his requeſt, and for other money before that time due and owing from the ſaid J. to the ſaid W. upon an account ſtated between them, to wit, at, &c. aforeſaid, which ſaid ſum of money ſo due and owing from the ſaid J. to the ſaid W. exceeds the damages ſuſtained by the ſaid J. for and by reaſon of the not performing of the ſaid ſeveral promiſes and undertakings of the ſaid W. in the ſaid declaration mentioned, except as to the ſaid ſum of two pounds eleven ſhillings, parcel, &c. and out of which ſaid ſum of money ſo due and owing from the ſaid J. to the ſaid W. he the ſaid W. is ready and willing, and hereby offers to ſet-off and allow to the ſaid J. the full amount of the ſaid damages, except as aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided; and this he the ſaid W. is ready to verify: wherefore he prays judgment if the ſaid J. ought to have or maintain his aforeſaid action thereof againſt him, &c.

Drawn by MR. TIDD.

DANE *at the ſuit of* ADAMS. } AND the ſaid Thomas, by James Tappenden his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid William hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, the ſaid Thomas, by leave of the court here to him for this purpoſe

Plea of ſet-off.

poſe granted, according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid William ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſays, that the ſaid William now is, and on the day of exhibiting of the bill of the ſaid William, was indebted to the ſaid Thomas in more money than is due and owing from the ſaid Thomas to the ſaid William, upon the ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of five hundred pounds of lawful money of Great Britain, for ſo much money by the ſaid Thomas before that time paid, laid out, and expended to and for the uſe of the ſaid William, at his ſpecial inſtance and requeſt, and in the further ſum of five hundred pounds of like lawful money, for ſo much money by the ſaid Thomas before that time lent and advanced to the ſaid William at his like inſtance and requeſt, and in the further ſum of five hundred pounds of like lawful money, for ſo much money by the ſaid William before that time had and received to and for the uſe of the ſaid Thomas; and in the further ſum of five hundred pounds of like lawful money, for divers goods, wares, and merchandizes by the ſaid Thomas before that time ſold and delivered to the ſaid William at his like inſtance and requeſt; and in the further ſum of five hundred pounds of like lawful money, for work and labour, care and diligence by the ſaid Thomas before that time done, perform-ed, and beſtowed for the ſaid William in and about the buſineſs of the ſaid William, at his like inſtance and requeſt, to wit, at Weſtminſter aforeſaid, in the county aforeſaid, ſo much of which ſaid ſeveral ſums of money ſo due and owing from the ſaid William to the ſaid Thomas, as will be ſufficient to ſatisfy the ſaid William the damages which he hath ſuſtained by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, he the ſaid Thomas will deduct and ſett-off according to the form of the ſtatute in ſuch caſe lately made and provided; and this he is ready to verify: wherefore he prays judgment if the ſaid William ought to have or maintain his aforeſaid action thereof againſt him, &c.

W. BALDWIN.

[illegible] of ſet off, work and labour, money laid out &c.

AND the ſaid Henry C. by Chriſtopher H. his attorney, comes and defends the wrong and injury, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid T. H. the elder and T. H. the younger have above thereof in their ſaid declaration complained againſt him; and of this he puts himſelf upon the country: and the ſaid T. H. the elder and T. H. the younger do the like: And the ſaid Henry, for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid T. H. the elder and

Thomas

Thomas H. the younger, ought not to have or maintain their ſaid action thereof againſt him the ſaid Henry, becauſe he ſays, that before and at the time of ſuing out the original writ of the ſaid Thomas H. the elder and Thomas H. the younger, they the ſaid Thomas H. the elder and Thomas H. the younger were and ſtill are indebted to the ſaid Henry in a large ſum of money, to wit, in the ſum of three thouſand five hundred pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes before that time ſold and delivered by the ſaid Henry to the ſaid Thomas H. the elder and Thomas H. the younger, and at their ſpecial inſtance and requeſt, and alſo in the further ſum of three thouſand five hundred pounds of like lawful money, for work and labour before that time done, performed, and beſtowed by the ſaid Henry, his ſervants and workmen, of the ſaid Thomas H. the elder and Thomas H. the younger, and at their like ſpecial inſtance and requeſt; and alſo in the further ſum of three thouſand five hundred pounds of like lawful money for ſo much money by the ſaid Henry before that time lent and advanced to the ſaid Thomas H. the elder and Thomas H. the younger, and at their like ſpecial inſtance and requeſt; and alſo in the further ſum of three thouſand five hundred pounds of like lawful money, for ſo much money before that time paid, laid out, and expended by the ſaid Henry for the ſaid Thomas Holman the elder and Thomas H. the younger, and at their like ſpecial inſtance and requeſt; and alſo in the further ſum of three thouſand five hundred pounds of like lawful money before that time had and received to the uſe of the ſaid Henry; and alſo in the further ſum of three thouſand five hundred pounds, upon an account ſtated by and between the ſaid Thomas Holman the elder and Thomas Holman the younger and the ſaid Henry, which ſaid ſeveral ſums of money exceed the damages ſuſtained by reaſon of the not performing of the ſeveral promiſes and undertakings in the ſaid declaration mentioned; and this the ſaid Henry is ready to verify: wherefore he prays judgment if the ſaid Thomas Holman the elder and Thomas Holman the younger ought to have or maintain their aforeſaid action thereof againſt him the ſaid Henry, &c.

THOMAS WALKER.

Replication ſetting off.

And the ſaid Thomas H. the elder, and Thomas H. the younger, as to the ſaid plea of the ſaid Henry by him ſecondly above pleaded in bar, ſay, that they, by reaſon of any thing in that plea contained, ought not to be barred from having and maintaining their aforeſaid action thereof againſt him, becauſe they ſay, that they the ſaid Thomas H. the elder and Thomas H. the younger were not, nor are indebted to the ſaid Henry in manner and form as the ſaid Henry has in that plea above alledged; and this they pray may be enquired of by the country: and the ſaid Thomas Holman the elder, and Thomas Holman the younger, do the like; therefore

therefore as well to try this iſſue as the ſaid other iſſue between the parties above joined, the ſheriff is commanded that he cauſe to come here in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

J. ADAIR.

[illegible] general [illegible] and *ſet off.*

AND the ſaid Charles, by Charles II. the younger, his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid Andre Leffelore hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, the ſaid Charles, by leave of the court here to him for this purpoſe granted, according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid Andre L. ought not to have or maintain his aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid Andre L. now is, and on the day of exhibiting the bill of the ſaid Andre L. was indebted to the ſaid Charles in more money than is due and owing from the ſaid Charles to the ſaid Andre L. upon the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of one hundred pounds, of lawful money, upon an account before that time ſtated and ſettled between the ſaid Andre L. and the ſaid Charles, whereby the ſaid Andre L. was found in arrear to the ſaid Charles in the ſum of one hundred pounds of like lawful money; and in the further ſum of one hundred pounds, of like lawful money, for ſo much money by the ſaid Charles before that time paid, laid out, and expended, to and for the uſe of the ſaid Andre L. at his like inſtance and requeſt; and in the further ſum of one hundred pounds, of like lawful money, by the ſaid Andre L. before that time had and received to and for the uſe of the ſaid Charles; and in the further ſum of one hundred pounds, of like lawful money, for ſo much money by the ſaid Charles before that time lent and advanced to the ſaid Andre L. at his like inſtance and requeſt, to wit, at Weſtminſter aforeſaid, in the county aforeſaid, ſo much of which ſaid ſeveral ſums of money, ſo due and owing from the ſaid Andre L. to the ſaid Charles as will be ſufficient to ſatisfy the ſaid Andre L. the damages which he hath ſuſtained by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, he the ſaid Charles will deduct and ſet off, according to the form of the ſtatute in ſuch caſe lately made and provided; and this he is ready to verify, wherefore he prays judgment if the ſaid Andre L. ought to have or maintain his aforeſaid action thereof againſt him, &c.

W. BALDWIN.

AND the ſaid Benjamin, by Edward Yalden his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form

form as the ſaid Thomas hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf the ſaid Benjamin, by leave of the court here to him for this purpoſe granted, according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid Thomas ought not to have or maintain his aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid Thomas now is, and on the day of exhibiting the bill of the ſaid Thomas was, and ſtill is, indebted unto him the ſaid Benjamin in more money than is due and owing from the ſaid Benjamin to the ſaid Thomas, upon the ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of fifty pounds, of lawful money of Great Britain, for meat, drink, waſhing, and lodging by the ſaid Benjamin before that time found and provided for the ſaid Thomas, at his ſpecial inſtance and requeſt; and in the further ſum of fifty pounds, of like lawful money, for ſo much money by the ſaid Benjamin before that time paid, laid out, and expended, to and for the uſe of the ſaid Thomas, at his like inſtance and requeſt; and in the further ſum of fifty pounds, of like lawful money, for work and labour, care and diligence, by the ſaid Benjamin and his ſervants before that time done, performed, and beſtowed for the ſaid Thomas, in and about the buſineſs of the ſaid Thomas, at his like inſtance and requeſt; and in the further ſum of fifty pounds, of like lawful money, for the keeping of divers horſes, mares, and geldings of the ſaid Thomas, and for horſe-meat and other neceſſary provender by the ſaid Benjamin before that time found and provided for the ſaid horſes, mares, and geldings, at the like inſtance and requeſt of the ſaid Thomas; and in the further ſum of fifty pounds, of like lawful money, for ſo much money by the ſaid Thomas before that time had and received, to and for the uſe of the ſaid Benjamin, to wit, at Godalming, in the ſaid county of Surry; ſo much of which ſaid ſeveral ſums of money, ſo due and owing from the ſaid Thomas to the ſaid Benjamin, as will be ſufficient to ſatisfy the ſaid Thomas the damages which he hath ſuſtained, by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, he the ſaid Benjamin will deduct and ſet off, according to the form of the ſtatute in ſuch caſe lately made and provided; and this he is ready to verify: wherefore he prays judgment if the ſaid Thomas ought to have or maintain his aforeſaid action thereof againſt him, &c.

LESCELLES, ESQ. *at the ſuit of* MAYHEW AND ANOTHER. } AND the ſaid Balthazar A. by Charles H. the younger, his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid John and William have above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, the Plea of

the ſaid Balthazar Anthony, by leave of the court here to him for this purpoſe granted, according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid John and William now are, and on the day of exhibiting the bill of the ſaid John and William were indebted unto the ſaid Balthazar Anthony in more money than is due and owing from the ſaid Balthazar Anthony to the ſaid John and William, upon the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of two hundred pounds of lawful money of Great Britain, for ſo much money by the ſaid Balthazar Anthony, before that time paid, laid out, and expended to and for the uſe of the ſaid John and William, at their ſpecial inſtance and requeſt; and in the further ſum of two hundred pounds, of like lawful money, for ſo much money by the ſaid John and William before that time had and received to and for the uſe of the ſaid Balthazar Anthony, that is to ſay, at Weſtminſter aforeſaid, in the county aforeſaid; ſo much of which ſaid ſeveral ſum of money, ſo due to the ſaid Balthazar Anthony from the ſaid John and William, as will be ſufficient to ſatisfy the ſaid John and William the damages which they have ſuſtained, by reaſon of the non-performance of the ſaid ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, he the ſaid Balthazar Anthony will deduct and ſet off and allow, according to the form of the ſtatute in ſuch caſe lately made and provided; and this the ſaid Balthazar Anthony is ready to verify; wherefore he prays judgment if the ſaid John and William ought to have or maintain their aforeſaid action againſt him, &c.

W. BALDWIN.

[illegible] general [illegible] and no- [illegible] of [illegible] promiſſory [illegible] and one [illegible] pound [illegible] rent of [illegible] &c.

FIRST, General iſſue. (Begin notice of ſet off in the uſual form), that is to ſay, in the ſum of fifteen pounds fifteen ſhillings, of, &c. upon and by virtue of a certain promiſſory note in writing, made and ſubſcribed by the ſaid plaintiff, and bearing date, &c. and delivered by the ſaid laintiff to one J. W.; whereby the ſaid plaintiff promiſed to pay to the ſaid J. W. (by the name and deſcription of, &c.) or order, the ſum of fifteen pounds fifteen ſhillings on demand, for value received by the ſaid plaintiff; and which ſaid note, before the exhibiting of the bill of the ſaid plaintiff, had been duly indorſed by the ſaid J. W. to the ſaid defendant, and the payment thereof duly demanded of the ſaid plaintiff by the ſaid defendant; and which ſaid note, before the exhibiting of the bill of the ſaid plaintiff, was, and ſtill is, in full force, and wholly unpaid and unſatisfied,: And alſo in the ſum of one hundred pounds, of, &c. for the uſe and occupation of divers meſſuages, lands, and tenements of the ſaid defendant, with the appurtenances, ſituate, lying, and being at, &c. before that time had, held, uſed, occupied, and enjoyed by the ſaid plaintiff for a long ſpace of time then elapſed, at his ſpecial inſtance and requeſt, and by

by the permiſſion and ſufferance of the ſaid defendant. (Money paid, &c. &c.; and common concluſion to the notice.)

Drawn by MR. GRAHAM.

TENDER.

AND the ſaid T. H. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to all the ſaid ſuppoſed promiſes and undertakings of the ſaid Thomas in the ſaid declaration mentioned; and alſo as to all the ſaid ſums of money therein ſpecified and mentioned, except as to one pound and one ſhilling, part of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, ſays, that he did not undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And as to the ſaid promiſes and undertakings in the ſaid declaration mentioned, as to one pound and one ſhilling, part and parcel of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, he the ſaid Thomas ſays, *actio non*, to recover any further damages againſt him than the ſaid ſum of one pound one ſhilling, part and parcel of the ſaid ſeveral ſums of money in the ſaid declaration mentioned and ſpecified; becauſe he ſays, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and before the exhibiting the bill of the ſaid John, to wit, on, &c. in the ſaid declaration mentioned, at, &c. he the ſaid Thomas tendered and offered to pay to the ſaid John the ſaid ſum of one pound one ſhilling, part and parcel, &c. which ſaid ſum of one pound one ſhilling, he the ſaid John then and there refuſed to accept from the ſaid Thomas: And the ſaid Thomas further ſays, that he has always, from the time of the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as to the ſaid ſum of one pound one ſhilling, part and parcel, &c. hitherto hath been, and ſtill is, ready and willing to pay to the ſaid John the ſaid ſum of one pound one ſhilling, and now brings the ſame into court here, ready to be paid to the ſaid John if he will accept the ſame; and this, &c. wherefore, &c. if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, to recover any further damages than the ſaid ſum of one pound one ſhilling, part and parcel of the ſaid ſeveral ſums of money, in the ſaid declaration mentioned and ſpecified.

Plea (ſo much of declaration as to money had and received, account ſtated, as to all promiſes except as to guineas, &c. and the guineas, &c. and tender.

Drawn by MR. GRAHAM.

AND the ſaid Edward, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he is not guilty of the premiſes above laid to his charge, in manner and form as the ſaid Henry hath above thereof complained againſt him; and

Plea of [illegible] 30l. to [illegible] brought, agreement [illegible] pair the [illegible] houſe, [illegible] gratis,

Plea.

and of this he puts himſelf upon the country: And for further plea in this behalf, the ſaid Edward, by leave, &c. *actio non*, to recover any greater or more damages againſt him in reſpect thereof than the ſum of thirty pounds, of, &c.; becauſe he ſays, that after the ſaid vicarage of the ſaid pariſh church of Feckenham had been ſo vacated as aforeſaid, and after the ſaid Henry had been inſtituted and inducted into the ſame vicarage of the pariſh church of Feckenham as aforeſaid, and before the day of exhibiting the bill of the ſaid Henry, to wit, on the ſaid thirteenth day of September, in the ſaid year of Our Lord 1786, at Feckenham aforeſaid, in the county aforeſaid, he the ſaid Edward tendered and offered to pay to the ſaid Henry the ſaid ſum of thirty pounds, to be laid out in the neceſſary repairs of the ſaid dwelling-houſe and premiſes in the ſaid declaration mentioned; which ſaid ſum of thirty pounds the ſaid Henry then and there refuſed to accept from the ſaid Edward: And the ſaid Edward further ſays, that he the ſaid Edward always from the time of the inſtitution and induction of the ſaid Henry to the vicarage of the pariſh church of Feckenham aforeſaid hitherto, hath been, and ſtill is ready to pay to the ſaid Henry the ſaid ſum of thirty pounds; and the ſaid Edward brings the ſame here into court ready to be paid to the ſaid Henry, if the ſaid Henry will accept the ſame from the ſaid Edward: And the ſaid Edward avers, that the ſaid ſum of thirty pounds was fully ſufficient for the neceſſary repairs of the ſaid dwelling-houſe and premiſes in the ſaid declaration mentioned, at the ſaid time when the ſaid vicarage of Feckenham became vacant, as in the declaration is mentioned; and this, &c.: wherefore he prays judgment if the ſaid Henry ought to have or maintain his aforeſaid action againſt him to recover any more or greater damages than the ſaid ſum of thirty pounds in this behalf, &c.

FOSTER BOWER.

I have great doubts whether the defendant is entitled to plead a tender in the preſent caſe; but think he cannot, notwithſtanding the caſe in Stra. Squire *v.* Archer, 906.; and the caſe in 2 Lev. 213.

of tender payment of into which takes ſufficient.

AND the ſaid Samuel, the ſaid Iſaac, and the ſaid Thomas, by Daniel C. their attorney, come and defend the wrong and injury, when, &c. and as to all the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, except as to the ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence, parcel of the ſum of four thouſand pounds in the firſt Count of the ſaid declaration mentioned, ſay, that they did not undertake or promiſe in manner and form as the ſaid John, and the ſaid Charles, and the ſaid Oſborne have above thereof complained againſt them; and of this they put themſelves upon the country, &c.: And as to the ſaid ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence, parcel of the ſaid ſum of four thouſand pounds in the ſaid firſt Count of the ſaid declaration mentioned,

mentioned, they ſay, that the ſaid John, the ſaid Charles, and the ſaid Oſborne ought not to have or maintain their ſaid action thereof againſt them to recover any more or greater damages in this behalf than the ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence; becauſe they ſay, that they the ſaid Samuel, the ſaid Iſaac, and the ſaid Thomas always, from the time of the making the aforeſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, as to the ſaid nine hundred and ſixty-nine pounds ſeventeen ſhillings and three-pence hitherto, at London, &c. aforeſaid, have been, and ſtill are, ready and willing to pay to the ſaid John, the ſaid Charles, and the ſaid Oſborne the ſaid nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence; and that they the ſaid Samuel, the ſaid Iſaac, and the ſaid Thomas, after the making of the ſaid promiſe and undertaking in the ſaid firſt Count of the ſaid declaration mentioned, as to the ſaid ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence, and before the exhibiting of the bill of the ſaid John, the ſaid Charles, and the ſaid Oſborne, to wit, on the ſame day and year in the ſaid declaration mentioned, at London &c. aforeſaid, offered to pay to the ſaid John, the ſaid Charles, and the ſaid Oſborne, the ſaid nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence, and then and there tendered the ſame on payment to them the ſaid John, Charles, and Oſborne, to receive which the ſaid John, Charles, and Oſborne then and there wholly refuſed; and the ſaid Samuel, the ſaid Iſaac, and the ſaid Thomas now bring the ſame here into court, ready to be paid to the ſaid John, the ſaid Charles, and Oſborne, if they will receive the ſame; and this they are ready to verify: wherefore they pray judgment if the ſaid John, Charles, and Oſborne ought to have or maintain their aforeſaid action thereof againſt them to recover any more or greater damages in this behalf than the ſaid ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence: And the ſaid John, Charles, and Oſborne, as to the ſaid plea of the ſaid Samuel, Thomas, and Iſaac by them above pleaded, as to all the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, except as to the ſum of nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence, parcel of the ſaid ſum of four thouſand pounds in the ſaid firſt Count of the ſaid declaration mentioned, and concerning which the ſaid Samuel, Thomas, and Iſaac, have above put themſelves upon the country; the ſaid Charles, John, and Oſborne do ſo likewiſe. And as to the ſaid nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence in the ſaid firſt promiſe and undertaking mentioned, and which ſaid nine hundred and ſixty-nine pounds ſeventeen ſhillings and threepence the ſaid Samuel, Thomas, and Iſaac have above brought into court, as in their ſaid plea in that behalf mentioned, the ſaid John, Charles, and Oſborne now take and accept the ſame out of court; therefore let the ſaid Samuel, Thomas, and Iſaac be thereof acquitted, &c.; therefore let a jury come thereupon before our lord the king, on, &c.

who

who are in no wise akin either to the said John L. Charles P. and Osborne R. or to the said Samuel C. Isaac H. and Thomas B. to take cognizance on their oaths of the whole truth of the premises, because, as well the said Samuel C. Isaac H. and Thomas B. as the said John L. Charles P. and Osborne R. have put themselves upon that jury; the same day is given to the parties aforesaid at the same place. F. BULLER.

Plea of non-assumpsit to part and tender to the residue. Tippey's B. N. P. 2d edit. &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the second, third, fourth, and fifth Counts of the aforesaid declaration, and as to twenty pounds, part of the said sum of thirty pounds in the said first promise and undertaking in the said declaration mentioned, says, that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.: And as to ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, he the said defendant says, that the said plaintiff ought not to have or maintain his aforesaid action against him to recover any more or greater damages than ten pounds in this behalf; because he says that the said defendant, after the making of the said first promise and undertaking as to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, and before the exhibiting, &c. to wit, in, &c. at, &c. was ready to pay, and then and there offered to pay to the said plaintiff the said sum of ten pounds, residue, &c. and then and there tendered payment thereof to the said plaintiff, to receive which of the said defendant he the said plaintiff then and there wholly refused: And the said defendant further saith, that he the said defendant hath always from the time of the making of the said first promise and undertaking as to ten pounds, residue, &c. hitherto at, &c. aforesaid, been ready to pay, and yet is there ready to pay to the said plaintiff the said sum of ten pounds, and now brings the same here into court ready to pay to the said plaintiff, if he the said plaintiff will accept the same: And this he the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him *the said defendant to recover any more or greater damages than ten pounds in this behalf*, [or thus] *against him in respect to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said declaration mentioned, to recover any more or greater damages than ten pounds.*

V. LAWES.

Replication to second plea, denying the tender.

And the said plaintiff, as to the plea of the said defendant secondly above pleaded as to the said ten pounds, residue of the said thirty pounds in the said first promise and undertaking in the said

ſaid declaration mentioned, ſays, that the ſaid plaintiff by reaſon of any thing in the ſaid plea above alledged, ought not to be barred from having and maintaining, &c. to recover his full damages, by reaſon of the not performing of the ſaid firſt promiſe and undertaking as to the ten pounds, becauſe he ſaith, that the ſaid defendant did not offer to pay to him the ſaid plaintiff the ſaid ſum of ten pounds in manner and form as the ſaid defendant hath in pleading above alledged; and this he the ſaid plaintiff prays may be enquired of by the country, and the ſaid defendant doth the like, therefore, &c.

Another replication to ſuch plea, admitting the tender and acceptance of the money out of court

See Impey B. R. 229. 264, &c. 5 P. Morg. Ent. 270.

And thereupon the ſaid plaintiff freely takes and accepts out of the court here the ſum of ten pounds, ſo tendered and paid into court hereas aforeſaid; therefore as to the ſaid ſum of ten pounds the ſaid plaintiff is ſatisfied, and as to the reſt of the ſame above joined between the parties (let a jury come before our lord the king, at Weſtminſter, on next, after) aforeſaid, *it is commanded to the ſheriff that he cauſe to come here, on, &c.* twelve, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

Drawn by MR. WARREN.

Replication to a plea of tender, that plaintiff ſued out a bill of Middleſex, with continuances, before the making of any tender by defendant.

AND the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by him above pleaded, as to the ſaid promiſe and undertaking in the ſaid declaration ſecondly mentioned, with reſpect to ſix pounds ſix ſhillings, parcel of the ſaid twelve pounds twelve ſhillings in that promiſe mentioned, ſays that he the ſaid plaintiff ought not by any thing in that plea alledged to be barred from recovering more damages in that behalf from him the ſaid defendant than the ſaid ſix pounds ſix ſhillings, becauſe he ſaith, that after the making the ſaid promiſe and undertaking as to the ſaid ſix pounds ſix ſhillings, parcel, &c. that is to ſay, on the nineteenth day of May, in the thirty-firſt year of the reign of our Lord the now king, he the ſaid plaintiff, for the recovery of his damages which he had ſuſtained, as well by the non-performance of the ſaid ſecond promiſe and undertaking as to the ſaid ſix pounds ſix ſhillings, parcel, &c. and likewiſe as to the reſidue of the money in that promiſe mentioned, as alſo by the not performing of the ſeveral other promiſes and undertakings in the aforeſaid declaration mentioned, proſecuted out of the court of our ſaid lord the king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the ſaid county of Middleſex), a certain precept called a bill of Middleſex, againſt the ſaid defendant, whereby it was commanded to the then ſheriff of Middleſex that he ſhould take the ſaid defendant, and Robert Roe, if they might be found in his bailiwick, and that he ſhould keep them ſafely, ſo that he might have their bodies before the lord the king at Weſtminſter, on Friday next after the morrow of the Holy Trinity then next following, to anſwer the ſaid plaintiff in a plea of treſpaſs, and that the ſaid ſheriff ſhould then have there that precept, at which day of the return of that

precept, that is to ſay, on Friday next after the morrow of the Holy Trinity, in the thirty-firſt year aforeſaid, before our lord the king, at Weſtminſter, came the ſaid plaintiff in his own proper perſon, and offered himſelf againſt the ſaid defendant in the plea aforeſaid: And the ſheriff of Middleſex aforeſaid did not ſend the ſaid precept, nor did he do any thing therein, nor did the ſaid defendant come or appear according to the exigency of that precept; wherefore the ſaid plaintiff prayed another precept of the ſaid lord the king to be directed to the ſheriff of the county of Middleſex, in form aforeſaid, and it was granted to him, returnable before our ſaid lord the king on Wedneſday next after eight days of the Holy Trinity then next following, for the ſaid defendant to anſwer to the ſaid plaintiff in the plea aforeſaid, the ſame day was given to the ſaid plaintiff there, &c. at which day, at the return of the ſaid laſt-mentioned precept, that is to ſay, on Wedneſday next after eight days of the Holy Trinity, before our lord the king, at Weſtminſter, came the ſaid plaintiff, and the ſaid defendant then and there alſo appeared in the ſaid court, to anſwer to the ſaid plaintiff in the plea aforeſaid, according to the exigency of the ſaid laſt-mentioned precept, and the ſaid plaintiff further ſaith, that the ſaid ſeveral precepts ſo proſecuted as aforeſaid, were reſpectively proſecuted by him the ſaid plaintiff againſt the ſaid defendant, with intent to implead the ſaid defendant for the ſeveral cauſes of action aforeſaid, in the ſaid declaration ſpecified, and to cauſe and compel the ſaid defendant to appear in the ſaid court here, in order that the ſaid plaintiff might declare againſt him for the ſeveral cauſes of action, according to the courſe and cuſtom of the ſaid court, and that he the ſaid plaintiff in purſuance of ſuch his intentions, exhibited his aforeſaid bill and declared againſt the ſaid defendant, upon the ſaid ſeveral cauſes of action in manner and form aforeſaid, and therein mentioned, for the ſaid ſix pounds ſix ſhillings, parcel of the ſaid twelve pounds twelve ſhillings in the ſaid ſecond promiſe and undertaking mentioned, and the ſaid plaintiff further ſays that the ſaid defendant did not at any time before the ſuing forth the firſt-mentioned precept out of the court of our lord the king, before the king himſelf, in manner aforeſaid, tender or offer to pay to the ſaid plaintiff the ſaid ſix pounds ſix ſhillings, parcel of the ſaid twelve pounds twelve ſhillings in the ſaid ſecond promiſe and undertaking mentioned, and this he the ſaid plaintiff is ready to verify; wherefore he prays judgment and his damages, on occaſion of not performing of the ſaid ſecond promiſe and undertaking as to the ſaid ſix pounds ſix ſhillings, parcel, &c. to be adjudged to him, &c. J. YATES.

In ſtrictneſs perhaps the preſent replication may defeat the tender, but in a caſe of this kind, I ſhould recommend it to the plaintiff to agree the matter with the defendant, without running the riſque of any further expence to himſelf, where the debt is ſo ſmall, and where the defence will appear in ſo favourable a light. J. YATES.

In

In the Exchequer of Pleas.

BEAVAN *verſus* BEAVAN, JUN. } AND the ſaid plaintiff, as to the plea of the ſaid defendant by him above pleaded, as to thirty pounds thirteen ſhillings, reſidue of the ſaid ſeveral ſums of money in the ſaid declaration mentioned, ſays that he the ſaid plaintiff, by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining his aforeſaid action to recover his full damages in reſpect of the ſaid thirty pounds thirteen ſhillings, becauſe proteſting that the ſaid plea as to thirty pounds thirteen ſhillings, and the matters therein contained, are inſufficient in law to preclude him the ſaid plaintiff from having and maintaining his aforeſaid action to recover his full damages in reſpect of the ſaid thirty pounds thirteen ſhillings, proteſting alſo, that he the ſaid plaintiff did not refuſe to accept the ſaid thirty pounds thirteen ſhillings from the ſaid defendant, as the ſaid defendant hath above in his ſaid plea in this behalf alledged: for replication in this behalf he the ſaid defendant ſays, that though true it is that the ſaid defendant did tender and offer to pay the ſaid thirty pounds thirteen ſhillings as he hath above acknowledged, yet the ſaid plaintiff in fact further ſaith, that after the making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as to the ſaid thirty pounds thirteen ſhillings, and before the making of the ſaid tender by the ſaid defendant as aforeſaid, to wit, on the ninth day of July, in the year 1783, to wit, at *Hay* aforeſaid, in the ſaid county of Brecon, he the ſaid plaintiff for the recovery of his damages by him ſuſtained, by reaſon of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, ſued and proſecuted out of the court of our lord the king, of his exchequer of pleas (the ſaid court then and ſtill being held at Weſtminſter, in the county of Middleſex), a certain writ of our ſaid lord the king called a *ſubpœna*, againſt him the ſaid defendant, whereby our ſaid lord the king commanded and ſtrictly enjoined him the ſaid defendant that (all excuſes apart), he ſhould appear before the barons of the exchequer of our lord the king, at Weſtminſter, on the ſixth day of November then next coming, to anſwer to our ſaid lord the king concerning certain articles then and there on the behalf of our ſaid lord the king to be objected; and that he ſhould in no wiſe omit under the penalty of one hundred pounds, which our ſaid lord the king would cauſe to be levied to his uſe upon the goods and chattels, lands and tenements of the ſaid defendant, if he ſhould neglect that our ſaid lord the king's preſent command; which ſaid writ of *ſubpœna* ſued and proſecuted by him the ſaid plaintiff againſt the ſaid defendant as aforeſaid, was ſo ſued and proſecuted by him the ſaid plaintiff with intent to implead the ſaid defendant upon and for the ſeveral cauſes of action in the ſaid declaration ſpecified, and to cauſe him to appear in the ſaid court here, and upon his ſaid appearance to declare againſt him for the ſaid ſeveral cauſes of action above-mentioned: And the ſaid plaintiff according to his intention aforeſaid, to wit, in Michaelmas term, in the twenty-fourth year of the reign of our

Replication to a plea of tender, that previous to the making of the tender, plaintiff ſued out a writ of ſubpœna in the court of Exchequer in this ſuit.

Bull. Ni. Pri. 151.

1. Wilſ. 141.

ſaid lord the king, exhibited his aforeſaid bill, and declared thereon againſt the ſaid defendant in manner and form aforeſaid, to wit, at *Hay* aforeſaid, in the ſaid county of Brecon, and this he the ſaid plaintiff is ready to verify; wherefore he prays judgment and his full damages, in reſpect of the ſaid thirty pounds thirteen ſhillings, reſidue of the money in the ſaid declaration mentioned, to be adjudged to him, &c. V. LAWES.

The plea in this caſe ſeems to be demurrable to, but as the law is clearly with the plaintiff, upon the point of the ſubpœna having iſſued before the tender, he had better put ſuch matter in iſſue than demur. If the preciſe time of iſſuing the ſubpœna be known, it might not be amiſs to ſtate it inſtead of the teſte, merely as it might probably be the means of preventing any ſpecial matter as to ſuch fact being rejoined; but if there be the leaſt doubt, the replication ſhould by all means ſtand as it does, as, if you vary from the teſte, the time will, I conceive, become material; as to the evidence of the defendant, ſhould he put the *iſſuing* of the writ in iſſue, an official copy of it will, I conceive, be ſufficient (*a*); but if the exiſtence of the writ be put in iſſue, then the writ itſelf muſt be ſhewn, but as to the ſervice, I do not think it material to be eſtabliſhed, as the operation of the tender is prevented by the ſuing out of the writ. If, however, it can be ſhewn without much difficulty, it may not be amiſs to come prepared with evidence of the fact.

V. LAWES.

(*a*) See Wood v. Lawton, 1. Wilſ. Rep. 141. 5. Bac. Abr. 7. Cro. Car. 264.

Replication of a ſubſequent demand and refuſal to a plea of tender.

As to the 1 on which t replication is founded, v. Brownl. 71. Hob. 207. 2 Roll. Abr. 427. 5. Abr 12 Anneſly 206. 2. Stra. 1027.

WALLS *verſus* LAYTON.

AND ſaid plaintiff, as to the ſaid plea of ſaid defendant by him above pleaded in bar, as to firſt, ſecond, third, fourth, fifth, ſixth, and ſeventh Counts of ſaid declaration, and as to five pounds two ſhillings and tenpence, part of the ſaid ſum of ten pounds in the 2d Count of ſaid declaration mentioned, whereof he hath above put himſelf upon the country, doth the like, &c. and as to ſaid plea of ſaid defendant by him above pleaded, as to four pounds ſeventeen ſhillings and twopence, reſidue of ten pounds in the promiſe and undertakings in ſaid ſecond Count of ſaid declaration mentioned, the ſaid plaintiff ſays, that ſhe by reaſon of any thing in that ſaid plea alledged, ought not to be barred from having and maintaining her aforeſaid action thereof againſt him ſaid defendant, to recover more and greater damages than four pounds ſeventeen ſhillings and twopence, becauſe proteſting that ſaid plaintiff did not refuſe to accept ſaid four pounds ſeventeen ſhillings and twopence in ſaid plea laſtly above ſpecified, in manner and form as ſaid defendant hath above in his ſaid plea in that behalf alledged; nevertheleſs for replication in this behalf, ſaid plaintiff ſays, that after the making of ſaid tender in ſaid plea mentioned, and before the ſuing forth of the original writ of ſaid plaintiff, to wit, on the twenty-firſt day of March A. D. 1782 aforeſaid, at, &c. aforeſaid, the ſaid plaintiff demanded of ſaid defendant ſaid ſum of four pounds ſeventeen ſhillings and twopence, and then and there required him to pay the ſame to her ſaid plaintiff, but that ſaid defendant then and there wholly refuſed to pay the ſame, or any part thereof, to the ſaid plaintiff, and hath from thence hitherto wholly refuſed, and ſtill refuſes ſo to do; and this ſhe is ready to verify: where-

Exhibiting of the bill, or levying of the plaint.

wherefore ſhe prays judgment and more and greater damages than four pounds ſeventeen ſhillings and twopence, on occaſion of the ſaid promiſe and undertaking of ſaid John as to ſaid four pounds ſeventeen ſhillings and twopence, reſidue of ſaid ſum of ten pounds in ſaid ſecond Count of ſaid declaration mentioned, to be adjudged when, &c. (or thus: and damages on occaſion of the premiſes to a greater amount than, &c. to be adjudged to her, &c.)

V. LAWES.

Rejoinder thereto.

And defendant ſaith, that ſaid plaintiff did not demand of ſaid defendant ſaid pounds in manner and form as ſaid plaintiff, in his replication aforeſaid, hath above alledged; and of this he puts himſelf upon the country, &c.

Judgment againſt defendant, having neglected to plead as to part of a particular Count; plaintiff takes judgment by *nil dicit* as to that, in order to prevent a diſcontinuance.

BADR *againſt* DAWSON. AND ſaid plaintiff, as to ſaid plea of ſaid defendant by him above pleaded, as to the firſt, third, fourth, and fifth promiſes and undertakings in ſaid declaration mentioned, and whereof ſaid defendant hath above put himſelf upon the country, ſaid plaintiff doth the like; and becauſe ſaid defendant hath not anſwered ſaid ſecond Count of ſaid declaration of ſaid plaintiff, as to the finding and providing, at the ſpecial inſtance and requeſt of ſaid defendant, divers other materials and other neceſſary things uſed and applied in and about the buſineſs in ſaid ſecond Count mentioned, nor hath he ſaid any thing in bar or preclusion of the action of ſaid plaintiff as to the promiſe and undertaking of ſaid defendant in ſaid ſecond Count mentioned, as far as the ſame related to the finding and providing ſaid laſt mentioned materials and things neceſſary, ſaid plaintiff prays judgment and his damages by reaſon thereof to be adjudged to him, &c.; whereupon it is conſidered, that ſaid plaintiff do recover againſt ſaid defendant his damages, by reaſon of the non-performance of the promiſe and undertaking of ſaid defendant in ſaid ſecond Count of ſaid declaration mentioned, as to the finding and providing ſaid materials and other neceſſary things laſt-mentioned, but becauſe it is unknown to the Court here what damages ſaid plaintiff hath ſuſtained by reaſon thereof, and becauſe it is convenient and neceſſary that there be but one taxation of damages in this cauſe; therefore, as to the aſſeſſment of ſaid damages againſt ſaid defendant, let all enquiry thereof ceaſe till the trial of the other iſſues joined in this cauſe. And as to ſaid plea of ſaid defendant by him ſecondly above pleaded in bar, he ſaid plaintiff ſaith, that by reaſon of any thing therein contained, he ought not to be barred from having and maintaining his aforeſaid action thereof againſt the ſaid defendant, to recover greater damages than ten pounds ten ſhillings, by reaſon of the not performing ſaid promiſe and undertaking in ſaid ſecond Count of ſaid declaration mentioned, as to the work and labour, care and diligence therein, and in the ſecond plea mentioned,

Unica taxatio.

Replication to a plea of a tender, pleaded to a *quantum meruit*, admitting the tender, ſays, that plaintiff deſerved to have more than the ſum intended, to wit, &c. pounds.

tioned, becauſe he ſaith, that though true it is that ſaid defendant did tender and offer to pay to him ſaid plaintiff ſaid ſum of ten pounds ten ſhillings in manner and form as ſaid defendant hath above in pleading alledged: yet for replication in this behalf, he ſaid plaintiff ſaith, that he reaſonably deſerved to have of ſaid defendant, for the work and labour, care and diligence in ſaid ſecond Count mentioned, more than ſaid ſum of ten pounds ten ſhillings tendered as aforeſaid, to wit, the ſum of fifty pounds of like lawful, &c. to wit, at, &c.; and this he ſaid plaintiff prays may be enquired of by the country; and ſaid defendants doth the like, &c: *therefore, as well* to try the iſſues above joined as to enquire what damages ſaid plaintiff hath ſuſtained by the non-performance of ſaid promiſe and undertaking in ſaid ſecond Count mentioned, as to the materials and things neceſſary in ſaid ſecond Count mentioned; let a jury, &c. &c. &c.

Award of *venire.*

T. WALKER.

Plea 1ſt. AND the ſaid Joſeph, by T. H. his attorney, comes and defends the wrong and injury, when, &c. and as to the ſaid promiſe and undertaking in the ſaid declaration firſt, ſecondly, and thirdly mentioned, and alſo as to the ſaid promiſe and undertaking in the ſaid declaration laſt above-mentioned, ſays, that he did not promiſe and undertake in manner and form as the ſaid William hath above complained againſt him; and of this he puts himſelf upon the country, &c. and the ſaid W. doth the like: and as to the ſaid promiſe and undertaking in the ſaid declaration laſt above-mentioned, as to fifteen guineas, parcel of the ſaid one hundred pounds therein contained, the ſaid Joſeph ſays, that the ſaid William ought not to have or maintain his ſaid action to recover any damages by reaſon of the non-payment of the ſaid ſum of fifteen guineas, becauſe he ſays, that after the making of the ſaid promiſe and undertaking in the ſaid declaration laſt above-mentioned as to the ſaid fifteen guineas, and before the day of exhibiting the bill of the ſaid W. to wit, on the firſt of October A. D. 1776, at, &c. he the ſaid Joſeph tendered and offered to pay to the ſaid W. the ſaid fifteen guineas which the ſaid W. then and there refuſed to accept from the ſaid Joſeph: And the ſaid J. further ſays, that he the ſaid Joſeph, from the time of the making of the promiſe and undertaking in the ſaid declaration laſtly mentioned as to the ſaid fifteen guineas, hitherto always hath been, and ſtill is ready to pay to the ſaid William the ſaid fifteen guineas; and the ſaid Joſeph brings the ſame into court, ready to be paid to the ſaid W. if the ſaid W. will accept the ſame from the ſaid Joſeph; and this he is ready to verify: wherefore he prays judgment if the ſaid W. ought to have his aforeſaid action for recovering of damages by reaſon of the non-payment of the ſaid ſum of fifteen guineas againſt him, &c.

2d Plea as to laſt Count, tender of fifteen guineas.

And

And hereupon the said W. freely accepts the said sum of fifteen guineas so brought here into court, wherefore the said William is satisfied as to the said fifteen guineas, and the said Joseph is thereof acquitted; and for trying the said issue above joined, let a jury come before our lord the king at Westminster, on next after , by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there.

Acceptance of the fifteen guineas, and venire awarded to try the other issue.

AND the said M. as to the said plea of the said W. as to the said thirty-five shillings, residue in the said first promise and undertaking in the said declaration above specified and above pleaded in bar, says, that the said plea, and the matter therein contained, are not sufficient in law to preclude the said M. from having his said action against the said W. to which plea, in manner and form as the same is above pleaded, she the said M. is not under any necessity nor any ways bound by the law of the land to answer; and this she is ready to verify: wherefore, for want of a sufficient plea in this behalf, she prays judgment and her damages by occasion of the premises to be adjudged to her, &c.; and for causes of demurrer in law to the same plea, the said M. according to the form of the statute in such case made and provided, shews to the court here this cause following, that is to say, for that the said W. hath not shewed or alledged in his said plea that the said M. ever refused to receive of the said W. the said thirty-five shillings, as in this case he ought to have alledged, and for that the said plea is insufficient, and wants form, &c.

Demurrer to a plea of tender, for not averring that plaintiff refused to accept the money.

Salk. 623. 2. Vent. 109. 1. Sid. 13.

AND the said plaintiff, as to the said plea of the said defendant as to the last first promise and undertaking in the said declaration mentioned, for the said twenty-four pounds above pleaded, he says, that he, by any thing by the said defendant in that plea alledged, ought not to be precluded from having his said action thereof against him the said defendant, because he says, that the said defendant did not offer to pay to the said plaintiff the said twenty four pounds in manner and form as the said defendant hath above thereof in his said plea alledged; and this he prays may be enquired of by the country, &c.

Replication to a plea of tender, that no such tender was ever made.

LLOYD *at the suit of* KAY. } AND the said David, by Richard Field his attorney, comes and defends the wrong and injury, when, &c. and as to all the promises in the said declaration mentioned except the third promise, and as to all the sums mentioned therein, except ten shillings and sixpence, parcel thereof, the said David says, that he did not undertake and promise in manner and form as the said Mary hath declared against him;

Plea to all the promises, except third, (for money had and received) and all the money therein except 10s. 6d. Non assumpsit and issue, and as to that 10s 6d. (the deposit) tender.

him; and of this he puts himſelf upon the country; and the ſaid Mary doth ſo likewiſe: and as to the ſaid ten ſhillings and ſixpence mentioned in the ſaid third promiſe, the ſaid David ſaith, that the ſaid Mary ought not to recover any damages againſt him for the ſame, becauſe he ſaith, that after the making of the ſaid third promiſe, and before the levying of the plaint of the ſaid Mary, to wit, on the day of in the year aforeſaid, and in the pariſh, county, and juriſdiction aforeſaid, he was ready and tendered, and offered to pay to the ſaid Mary the ſaid ten ſhillings and ſixpence which the ſaid Mary then and there refuſed to accept or take: And the ſaid David ſaith, that from the time of the making the ſaid third promiſe hitherto, he hath always been, and ſtill is ready and willing to pay the ſaid Mary the ſaid ten ſhillings and ſixpence, and brings the ſame here into court, ready to pay the ſame to the ſaid Mary if ſhe will accept the ſame; and this he the ſaid David is ready to verify: wherefore he prays judgment, and that the ſaid Mary may be barred from recovering any damages againſt him for the ſame, &c.: *And* for further plea in this behalf, by leave of the court here for that purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, as to the ſaid ſuppoſed promiſes in the firſt and ſecond Counts of the declaration of the ſaid Mary above-mentioned, he the ſaid David ſays, that ſhe the ſaid Mary ought not to have or maintain her ſaid action therefore againſt him the ſaid David, becauſe he ſays, that after the ſuppoſed making of the ſaid promiſes in the firſt and ſecond Counts of the ſaid declaration of the ſaid Mary above-mentioned, and before the ſuppoſed breach thereof in the firſt and ſecond Counts of the ſaid declaration likewiſe mentioned, to wit, on the day of in the year aforeſaid, and in the pariſh, county, and juriſdiction aforeſaid, ſhe the ſaid Mary did exonerate and diſcharge the ſaid David from the ſaid ſuppoſed promiſes and undertakings in the ſaid firſt and ſecond Counts of the ſaid declaration above-mentioned, and from all further performance thereof; and this the ſaid David is ready to verify: wherefore he prays judgment if the ſaid Mary ought to have or maintain her ſaid action therefore againſt him, &c.

2d to firſt and ſecond Counts, that plaintiff exonerated defendant from the performance thereof, before any other of the promiſes. 2. Lev. 144 12 Mod 538 1. Mod. 259. Bull. Ni. Pri. 152.

Replication. Special demurrer to the plea of tender, for being in bar of full damages and being made on a different day than mentioned in the third Count of the declaration, making the day material, and iſſue as to the exoneration mentioned in the third plea.

KAY *verſus* LLOYD. } And as to the plea of the ſaid David by him above pleaded in bar, as to the ſaid ten ſhillings and ſixpence, mentioned in the ſaid third promiſe, ſhe the ſaid Mary ſays, that ſhe ought not by reaſon of any thing by the ſaid David above in that behalf in pleading alledged, to be barred from recovering her full damages againſt the ſaid David for the ſame; becauſe ſhe ſays, that the ſaid laſt-mentioned plea of the ſaid David in manner and form as the ſame is above pleaded, and the matters therein contained, are not ſufficient in law to bar the ſaid Mary from recovering her damages for the ſame, to which ſaid plea, in manner and form as the ſame is above pleaded and ſet forth, ſhe the ſaid Mary is not under any neceſſity, nor is ſhe bound by law to anſwer; and this ſhe is ready to verify: wherefore ſhe prays judg-

judgment, and her full damages by her ſuſtained, by reaſon of the non-performance of the ſaid promiſe and undertaking of the ſaid David as to the ſaid ten ſhillings and ſixpence, parcel, &c. to be adjudged to her: and for cauſes in demurrer in law, ſhe the ſaid Mary, according to the form of the ſtatute in ſuch caſe made and provided, ſets down and ſhews to the court here as follows, to wit, for that the ſaid plea to the ſaid ten ſhillings and ſixpence, parcel of the money in the ſaid third promiſe in the ſaid declaration mentioned, is pleaded in total bar of the action of the ſaid Mary, and of all damages whatſoever as to the ſaid ten ſhillings and ſixpence; whereas the matter of the ſaid plea is no anſwer to the ſaid action of the ſaid Mary, as to the ſum of ten ſhillings and ſixpence, and can, if true, by law operate in bar of damages beyond that ſum of money only, and the ſaid plea ſhould have been pleaded accordingly, with a prayer of judgment, whether the ſaid Mary ought to have or maintain her ſaid action as to the ſaid ten ſhillings and ſixpence, to recover any more or greater damage in that behalf than the ſum of ten ſhillings and ſixpence; and for that the ſaid David hath in and by his ſaid plea pleaded the tender therein mentioned, to have been made upon another and different day than the day mentioned in the ſaid third Count of the ſaid declaration, whereas the ſame ſhould have been pleaded to have been made upon the ſame day as is mentioned in that Count, the circumſtance of time, as to that fact, being altogether immaterial, and for that the ſaid plea is, in various other reſpects, uncertain, inſufficient, and informal, &c.: And as to the ſaid plea of the ſaid David by him laſtly above pleaded in bar, as to the ſaid promiſes in the firſt and ſecond Counts of the ſaid declaration mentioned, ſhe the ſaid Mary ſays, that ſhe ought not by reaſon of any thing by the ſaid David in that plea in that behalf alledged, to be precluded from having and maintaining her aforeſaid action thereof againſt the ſaid David; becauſe ſhe ſays, that ſhe the ſaid Mary did not exonerate and diſcharge the ſaid David in manner and form as the ſaid David hath above in his ſaid laſt-mentioned plea in that behalf alledged; and this ſhe the ſaid Mary prays may be enquired of by the country, &c. T. BARROW.

N. B. In conſequence of this demurrer, defendant moved to amend on payment of coſts. T. B.

STATUTES PLEADED IN DISCHARGE.

Replication to a plea, that indorſer of a bill was a bankrupt, the bill was *bona fide* negociated, and plaintiff had no notice of the bankruptcy.

AND the ſaid plaintiff ſays, that by any thing above alledged in the ſaid plea of the ſaid defendant above pleaded, as to the ſaid promiſe and undertaking in the firſt Count of the ſaid declaration mentioned, he the ſaid plaintiff ought not to be barred from having his aforeſaid action againſt the ſaid defendant, becauſe, proteſting that the ſaid J. S. never did become a bankrupt: nevertheleſs, for replication in this behalf the ſaid plaintiff ſays, that the ſaid bill of exchange was really and *bona fide*, and in the uſual

[illegible]erſea

course of trade and dealing negociated by the said J. S. to the said plaintiff, for a full and valuable consideration, before the said plaintiff knew, understood, or had notice that the said J. S. was a bankrupt, or in insolvent circumstances, to wit, at, &c.; without this, that the said plaintiff knew, understood, or had notice that the said J. S. had become a bankrupt, in manner and form as the said defendant hath above in that behalf alledged; and this, &c.: wherefore he prays judgment and his damages by reason of the non-performance of the said promise of the said defendant to be adjudged to him, &c.

A. PALMER.

Rejoinder, that it was not part of the negociation and issue on the notice.

And the said defendant, as to the said plea of the said plaintiff by him above pleaded in reply to the said plea of the said defendant by him secondly above pleaded in bar, as to the said promise and undertaking in the first Count of the said declaration mentioned, says, that the said plaintiff, by reason of any thing in his said plea so pleaded by way of reply alledged, ought not to have or maintain his aforesaid action thereof against him, because, protesting that the said J. S. did become a bankrupt, as he the said defendant has above in pleading alledged; protesting also, that the said bill of exchange in the first Count of the said declaration mentioned, was not really and *bona fide*, and in the usual course of trading and dealing, negociated by the said J. S. to the said plaintiff, for a full and valuable consideration, before the said plaintiff knew, understood, or had notice that the said J. S. was a bankrupt, and in unduly circumstances, as the said plaintiff hath in his said plea by him pleaded by way of reply as aforesaid alledged for rejoinder in this behalf, he the said defendant says, as before, that the said plaintiff knew, understood, and had notice that the said J. S. had become a bankrupt in manner and form as the said defendant hath in that behalf alledged; and of this he puts himself upon the country, &c.

V. LAWES.

Plea to a declaration for work and labour; 1st, *non assumpsit*; 2d, that the promises were made jointly by defendant and one A. B. who is since a bankrupt, and that plaintiff was indebted to defendant and A. B. in more money, &c.

AND the said Isaac, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Isaac, *non assumpsit*: And for further plea in this behalf the said Isaac, by leave of, &c. *actio non*, because protesting that the said several promises and undertakings in the said declaration mentioned, if any such were made, were not made by the said Isaac alone in manner and form as the said John hath above in that behalf alledged: nevertheless, for plea in this behalf the said Isaac says, that the said several promises and undertakings in the said declaration mentioned, if any such were made, were made by the said Isaac jointly with one A. B. to wit, at, &c. in, &c.: And the said

ſaid Iſaac further ſays, that the ſaid A. B. before and at the time of the commencement of this ſuit, was, and ſtill is a bankrupt, within the true intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts; and that the ſaid C. D. and E. F. before and at the time of the commencement of this ſuit, were, and ſtill are, the aſſignees of the eſtate and effects of the ſaid A. B. within the true intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, to wit, at, &c.: And the ſaid Iſaac further ſays, that the ſaid John, before and at the time of the commencement of this ſuit, was and ſtill is indebted to the ſaid Iſaac and the ſaid C. D. and E. F. aſſignees as aforeſaid, in more money than is due and owing from the ſaid Iſaac and the ſaid C. D. and E. F. aſſignees as aforeſaid to the ſaid John, upon and by virtue of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, to wit, in the ſum of, &c. for goods ſold, money lent, &c. which ſaid ſums of money ſo due and owing from the ſaid John to the ſaid Iſaac and A. B. before he became a bankrupt, greatly exceed the ſaid ſeveral ſums of money ſo due and owing from the ſaid John and A. B. before he became a bankrupt to the ſaid John, upon or by reaſon of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, and which ſaid ſeveral ſums of money ſo due and owing from the ſaid John to the ſaid Iſaac and A. B. before he became a bankrupt, and the ſaid C. D. and E. F. aſſignees as aforeſaid ſince the bankruptcy, or ſo much thereof as ſhall be neceſſary in that behalf, the ſaid Iſaac is ready and willing, and hereby offers to ſet-off, and will, at the trial of this cauſe, ſet off againſt the monies due and owing from the ſaid Iſaac and A. B. before he became a bankrupt; and the ſaid C. D. and E. F. aſſignees aforeſaid, ſince the bankruptcy to the ſaid John, by virtue of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, according to the form of the ſtatute in that caſe made and provided; and this, &c. &c.

Drawn by MR. GRAHAM.

I am ſtrongly inclined to think, that the ſecond plea is good in point of law, though there has been no expreſs deciſion upon the queſtion, Whether, upon an action brought againſt one partner (who let ſlips the opportunity of pleading the partnerſhip in abatement) can ſet off a joint demand of the partnerſhip againſt plaintiff's debt. I have met with a *dictum* of Lord Mansfield, that the joint demand could be ſet off, but cannot refer to it. Upon the whole, I would adviſe the defendant to riſque the plea.

Replication, taking iſſue on the bankruptcy.

And the ſaid John, as to the ſaid plea of the ſaid Iſaac by him laſtly above pleaded in bar, ſaith, that [*precludi non*], becauſe proteſting that the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned were not, nor were any of them made jointly with one A. B. as the ſaid Iſaac hath in his ſaid plea alledged; proteſting alſo, that the ſaid A. B. was not, before nor at the time of the commencement of this ſuit, nor is a bankrupt within the true intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, as the ſaid Iſaac hath in his ſaid plea alledged; proteſting alſo, that the ſaid C. D. and E. F. were not, nor was either of them, choſen aſſignees as in the ſaid plea is above ſuppoſed: Yet for replication in this behalf the ſaid John ſays, that he was not indebted to the ſaid Iſaac and C. D. and E. F. aſſignees aforeſaid (*modo et forma*); and this he prays may be enquired of by the country.

Drawn by MR. GRAHAM.

Bankruptcy of defendant pleaded generally in conformity with the ſtatute, 5. Geo. 2. cap. 30. ſec. 7.

ABRAHAMS *at the ſuit of* BRISCALL.

AND ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that ſaid plaintiff, *actio non*, becauſe he ſaith, that ſaid defendant, after the making of the ſaid ſeveral promiſes and undertakings (*or recovery of the ſaid judgment aforeſaid*) in ſaid declaration mentioned, and before the exhibiting, &c. thereupon againſt ſaid defendant, to wit, on, &c. at, &c. became a bankrupt within the true intent and meaning of the ſeveral ſtatutes made then and now in force concerning bankrupts (*a*) or ſome or one of them: And ſaid defendant further ſaith, that the cauſe of action aforeſaid accrued to ſaid plaintiff before ſuch time as ſaid defendant became bankrupt as aforeſaid, to wit, at, &c. aforeſaid; and of this he puts himſelf upon the country, &c. (*b*).

J. MORGAN.

(*a*) In pleading that a man became a bankrupt, it is ſufficient to ſay, that he became a bankrupt within the meaning of the ſeveral ſtatutes, without ſetting forth any particular act of bankruptcy. *Vide* Comb. 108.

(*b*) That this plea muſt conclude to the country, See Poole, *v.* Broadfield, 1 Ba. Abr. Notes; Jo. 2[illegible] Cas. 28. 10 Mod 243. For the ſtatute intended to lay the whole proof of conformity, [illegible] on the defendant, without burthening the plaintiff with the proof of any act to the contrary, which it might be difficult to eſtabliſh. According to 2. Wilſ. 137. 139. Paris *v.* Salkeld this plea is bad, for not ſhewing conformity, &c. but on demurrer, for ſuch cauſe in the caſe of Willan *v.* Giordani, the Court of B. R. in Trinity Term, 22. Geo. 3. gave judgment for the defendant, Cooke's Bankrupt Law, 356. and over-ruled the caſe in Wilton.

Chapman

Chapman *againſt* Whiteſide. Declaration at the ſuit of ſecond Indorſee againſt the acceptor of a bill of exchange.

Plea, that firſt indorſer, at the time of his indorſing the bill was a bankrupt, and that defendant is anſwerable to the aſſignees of ſuch bankruptcy.

WHITESIDE *at the ſuit of* CHAPMAN. } AND ſaid defendant, by Thomas Holloway his attorney, comes and defends the wrong and injury, when, &c. and ſays, &c. [*non aſſumpſit*]; and for further plea as to the promiſe and undertaking in that 1ſt. Count of the ſaid declaration mentioned, and above ſuppoſed to have been made by ſaid defendant, he ſaid defendant, by leave, &c. ſays, that ſaid plaintiff, *actio non*, becauſe he ſays, that after the making of ſaid bill of exchange in ſaid 1ſt Count of ſaid declaration mentioned, and alſo after the acceptance of ſaid bill by him ſaid defendant, and the making of ſaid indorſement in ſaid 1ſt Count in ſaid declaration mentioned, and alledged to have been made on ſaid bill by the ſaid Robert Johnſon (the payee and firſt indorſer) in ſaid firſt Count of ſaid declaration mentioned, but before the making of the ſaid indorſement in ſaid 1ſt Count of ſaid declaration mentioned and alledged to have been made on ſaid bill by ſaid John Smith (the firſt indorſee) in ſaid 1ſt Count of ſaid declaration mentioned, and whilſt ſaid bill was in the poſſeſſion of ſaid John Smith, as indorſee of ſaid Robert Johnſon as aforeſaid, to wit, on the ſecond day of July 1781, ſaid J. S. became a bankrupt within the true intent and meaning of the ſeveral ſtatutes made and then in force concerning bankrupts, to wit, at Weſtminſter aforeſaid: And ſaid defendant in fact further ſaith, that after the making of ſaid indorſement ſo made by ſaid John Smith on ſaid bill as aforeſaid, and before the ſuing forth of the original writ of ſaid plaintiff, to wit, on the twenty-ſecond of Auguſt in the year aforeſaid, at, &c. aforeſaid, a certain commiſſion of bankruptcy of our lord the now king, founded on the ſtatutes made and then in force concerning bankrupts, and grounded on the aforeſaid bankruptcy of ſaid John Smith, at the petition of P. P. then a creditor of ſaid J. S. to a large amount, to wit, to an amount exceeding one hundred pounds, in due manner made and exhibited on behalf of himſelf, and all other the creditors of him ſaid J. S. and directed to H. B. J. B. and J. E. eſquires, and A. P. and J. L. gentlemen, was in due manner awarded and iſſued againſt him ſaid J. S. by which ſaid commiſſion our ſaid lord the king gave full power and authority to ſaid commiſſioners, or any four or three of them, to proceed according to the ſeveral ſtatutes made and now in force concerning bankrupts, not only concerning ſaid bankrupt, his body, lands, tenements, freeholds, and cuſtomary goods, debts, and all other things whatſoever, but alſo concerning all other perſons, who, by concealment, claim or otherwiſe did or ſhould offend touching ſaid promiſe, or any part thereof, contrary to the true intent and meaning of the ſame ſtatute, and to do and execute all and every thing and things whatſoever, as well for and towards ſatisfaction and payment of ſaid creditors as towards and for all other intents and purpoſes, according to the ordinances and proviſions of ſaid ſtatutes, as by ſaid commiſſion under the great ſeal of Great Britain, bearing date at Weſtminſter

ſter the day and year laſt aforeſaid, and now brought into court here, more fully appears: And ſaid defendant further ſays, that ſaid H. B. A. P. and J. L. three of the commiſſioners named in the aforeſaid commiſſion by virtue of the ſaid commiſſion, and alſo by virtue of the ſtatute in ſuch caſe made and provided, for the better relief of the creditors aforeſaid, afterwards, to wit, on the fourth day of September in the year 1781 aforeſaid, at, &c. aforeſaid, by a certain indenture then and there made between them the ſaid H. B. A. P. and J. L. of the one part, and ſaid plaintiff and ſaid P. P. of the other part (which ſaid indenture, ſealed with the ſeals of the ſaid H. B. A. P. and J. L. and bearing date the day and year laſt aforeſaid, is in the cuſtody, power, and poſſeſſion of ſaid plaintiff and ſaid P. P.) in execution of the aforeſaid commiſſion, did (as much as in them ſaid commiſſioners lay, and as they lawfully might), order, bargain, ſell, aſſign, and ſet over unto ſaid plaintiff and P. P. their executors, adminiſtrators, and aſſigns, all and ſingular the goods, wares, and merchandizes, debts, ſum and ſums of money, eſtate and effects of the aforeſaid John Smith, to have, to hold, receive, and enjoy the ſame goods, wares, and merchandizes, debts, ſum and ſums of money, and all other the eſtate and effects in ſaid indenture and hereinbefore mentioned to have been ordered, bargained, ſold, aſſigned, and ſet over unto them ſaid plaintiff and P. P. their executors, adminiſtrators, and aſſigns, in truſt: Nevertheleſs, to and for the uſe, benefit, and advantage of themſelves, and all and every other the creditors of ſaid J. J. who then already had, or thereafter ſhould or might in due time come in and ſeek relief under the aforeſaid commiſſion of bankruptcy, according to the limitations and directions of the ſeveral ſtatutes made concerning bankrupts as aforeſaid: And ſaid defendant in fact further ſaith, that after ſaid J. S. became a bankrupt as aforeſaid, and before and at the time of the making of ſaid indorſement in ſaid firſt Count of ſaid declaration mentioned to have been made by him the ſaid J. S. on ſaid bill of exchange in ſaid firſt Count of ſaid declaration mentioned, ſaid plaintiff knew, underſtood, and had notice that ſaid J. S. had become and was ſuch bankrupt as aforeſaid, to wit, at Weſtminſter aforeſaid; by means whereof, and by force of the aforeſaid commiſſion of bankruptcy, and of the aforeſaid indenture of aſſignment, and the ſeveral ſtatutes in ſuch caſe made and provided, the ſaid indorſement ſo made by ſaid J. S. on ſaid bill of exchange in ſaid firſt Count of ſaid declaration mentioned, was and is wholly void, and of no force or effect whatſoever, but ſaid bill of exchange, and all the intereſt of him the ſaid J. S. therein at the time of his making ſuch ſaid indorſement thereon as aforeſaid, was and is veſted in the ſaid plaintiff and P. P. as aſſignees of the eſtate and effects of ſaid John S. ſo being ſuch bankrupt as aforeſaid under and by virtue of the aforeſaid indenture of aſſignment ſo to them made as aforeſaid; and this he ſaid defendant was and is liable, as ſuch acceptor of ſaid bill as aforeſaid, to pay to them ſaid plaintiff and P. P. as ſuch aſſignees of the

19 G. 2. c. 32. § 2.

eſtate

eſtate and effects of ſaid John Smith, ſo being ſuch bankrupt as aforeſaid, the money in ſaid bill mentioned, together with all ſuch damages as they have ſuſtained or may ſuſtain on occaſion of the non-payment thereof, to wit, at Weſtminſter aforeſaid; and this he the ſaid defendant is ready to verify: wherefore he prays judgment if ſaid plaintiff ought to have his aforeſaid action as to ſaid promiſe and undertaking in ſaid firſt Count of the ſaid declaration mentioned againſt him, &c. V. LAWES.

See Replication and Rejoinder to a plea like this ante 185, 186.

COURTS OF CONSCIENCE.

AND the ſaid W. by A. B. his attorney, comes, &c. *actio non*, becauſe he ſays, that he the ſaid W. before and at the time of the exhibiting, &c. lived and reſided, and ſtill doth live and reſide within the city of London aforeſaid: And the ſaid W. further ſays, that he the ſaid W. always, from the time of the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned and above ſuppoſed to have been made by the ſaid W. hath been and ſtill is liable to be warned and ſummoned to the court of requeſts for the city of London, by force and virtue of the ſtatute made in the year of the reign of, &c.: And the ſaid W. further ſays, that he was not, at the time (*a*) of exhibiting, &c. indebted to the ſaid C. in any ſum or ſums of money, amounting to the ſum of forty ſhillings; and this, &c.; wherefore, &c. if, &c. by reaſon of the non-performing of the ſaid ſeveral promiſes and undertakings in ſaid declaration mentioned. J. MORGAN.

Court of Conſcience Act for London pleaded. 3. Jac. 1. c. 15. and 14. Geo. 3. c. 10. pleaded. Same ſuggeſted after verdict. 1. Stra. 46. 2. Stra. 1120. 1191.

(*a*) In C. B. ſay before and at the time of ſuing out the original writ.

AND the ſaid James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid Joſeph Moſs hath above thereof complained againſt him; and of this he puts himſelf upon the country: and for further plea in this behalf the ſaid James, by leave of the court here for this purpoſe firſt granted according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Joſeph Moſs ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſays, that he the ſaid James, long before and at the time of ſuing out the original writ of the ſaid Joſeph Moſs in this behalf, lived and reſided, and ſtill doth live and reſide in the city of London aforeſaid, to wit, in Bond Court, Walbrook, in the ſaid city: And the ſaid James further ſaith, that the ſaid James, from the time of the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned and above ſuppoſed to have been made

Plea of *Non aſſumpſit* to the whole, and the juriſdiction of court of requeſts for the city of London by rule of court.

made by the ſaid James, hath been, and ſtill is liable to be warned and ſummoned to the court of requeſts for the city of London: And the ſaid James further ſaith, that he was not, at the time of ſuing out the original writ of the ſaid Joſeph Meſs. indebted to the ſaid J. M. in any ſum or ſums of money amounting to the ſum of forty ſhillings; and this he is ready to verify: wherefore he prays judgment if the ſaid J. M. ought to have or maintain his ſaid action in this court againſt him, by reaſon of the non-performing of the ſaid ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, &c.

Court of Conſcience not to hold plea in the county of Middleſex, 23 Geo. 2. 33. pleaded.

This muſt be proved 3 D. and E. Term Reports, 455. Taylor v. Parr. Sec 2. W. 42. for the ſaid.

JURISPRONT, &c. } AND the ſaid defendant, in his proper perſon, *at the ſuit of* comes and defends the wrong and injury, when, GARDINER. &c. and as to the promiſe and undertaking in the ſaid declaration laſt mentioned, and alſo as to the promiſe and undertaking in the ſaid declaration firſt above mentioned, except as to the ſum of one pound three ſhillings and eightpence, parcel of the ſaid five pounds therein ſpecified, ſays, that he did not undertake or promiſe in manner and form as the ſaid plaintiff hath above thereof complained; and of this he puts himſelf upon the country, &c.: and as to the ſaid promiſe and undertaking in the ſaid declaration firſt above-mentioned as to one pound three ſhillings and eightpence, parcel of the ſaid five pounds therein contained; the ſaid defendant ſays, that the ſaid plaintiff ought not to have his aforeſaid action in this court againſt him, by reaſon of the not performing of the ſaid promiſe and undertaking in the ſaid declaration firſt above mentioned as to the ſaid one pound three ſhillings and eightpence, becauſe he ſays, that at the time of exhibiting, &c. and long before, he lived and reſided, and ſtill doth live and reſide, within the county of Middleſex, that is to ſay, at Enfield in the ſaid county of Middleſex: And the ſaid defendant further ſays, that the ſaid defendant always, from the time of the making of the promiſe and undertaking of the ſaid defendant in the ſaid declaration firſt above-mentioned, and ſuppoſed to have been made as to the ſaid one pound three ſhillings and eightpence, parcel of the ſaid five pounds therein contained, hitherto hath been and ſtill is liable, to be ſummoned and warned to the county court of Middleſex, within the true intent and meaning of the ſtatute made in the twenty-third year of the reign of his preſent Majeſty, for preventing delays and expences in the proceedings in the county court of Middleſex, and for the more ready and ſpeedy recovery of ſmall debts in the ſaid county court; and this, &c.; wherefore he prays judgment if the ſaid plaintiff ought to have his ſaid action in the ſaid court againſt him, by reaſon of the non-performance of the ſaid promiſe and undertaking in the ſaid declaration firſt above mentioned as to the ſaid one pound three ſhillings and eightpence, parcel of the ſaid five pounds therein ſpecified. W. HAYWOOD.

GARDINER.

COURT [illegible] ACTION.

GARDINER [illegible] to the said plea of the said plaintiff by him [illegible] plaintiff by [illegible] parcel of the said five pounds [illegible] ing in the said declaration mentioned, &c. that he [illegible] because he says, that he and [illegible] tioned in the said plea of the said defendant, [illegible] no person or persons that be liable to be summoned [illegible] ty court of Middlesex, in the suit of any plaintiff or plaintiffs, other than such person or persons as was or were liable to be summoned to the county court of Middlesex before that act was made, and that that Act should not extend to give the county court jurisdiction to hold plea of, or to hear or determine any action, cause, or other than such action, &c. as the county court might have held plea of by plaintiff before the making of the said act, as by the said act (amongst other things) more fully appears: And the said plaintiff further says, that the said defendant, before and at the time of the making of the said act, was, and ever since hath been, one of the attornies of the court of our lord the now king of the pleas here; and therefore the said defendant, neither at the time of the making of the said act, nor at the time of exhibiting of the said bill of the said plaintiff, was a person liable to be summoned to the said county court of Middlesex; and this, &c. wherefore he prays judgment, and his damages in this behalf to be adjudged to him, &c.

To this replication the defendant demurred, and on argument the Court determined, that defendant, as an attorney, could not plead this plea being privileged, and not obliged to attend, in this action on a bill exhibited against him as an attorney, vide the case reported, 2. Will. 44. This doctrine was recognized and confirmed in E. T. 30 Geo. 2. Wilkins v. [illegible] &c. on motion that said plaintiff bring the postea into Court, in order that defendant might enter a suggestion of the act. The court of B. R. observed on the act of the court of Common Pleas,

RYALL, *at the suit of* SCARPE. } FIRST, *Now at this* behalf the said defendant by leave, &c. says, that the said plaintiff, *actio non*, because he says, that the said plaintiff commenced his said action in the said court of our said lord the king, before the king himself, (the said court then and still being held at Westminster, in the county of Middlesex), against the said defendant, after the first day of April, A. D. 1750, mentioned in a certain act of parliament made in the thirty-second year of the reign of George the second, late king of Great Britain, &c. intituled, "An Act, &c." and that he the said defendant, at the time of the commencing the said action, was resident within the limits of the jurisdiction of the court of requests by the said act mentioned act, to wit, in the parish of St. George the Martyr, in the borough of Southwark, aforesaid, and was subject to the process and jurisdiction of the said court of requests for any debt by him owing to any person not exceeding

Plea in the Court of Chancery. A. [illegible] To explain and amend [illegible] Set out the [illegible] of the act

the ſum of forty ſhillings, to wit, at London, &c. aforeſaid: And the ſaid defendant further ſaith, that he was not, at the time of the commencing the ſaid action againſt him as aforeſaid, indebted to the ſaid plaintiff in any ſum or ſums of money amounting to the ſum of forty ſhillings; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

Court of Conſcience Act, 5, Geo. 3. ch. 8. for the *hundred of Blackheath*. Bromley, &c. in Kent, pleaded.

MEDHURST *at the ſuit of* CAIN. } AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid plaintiff ought not to have his aforeſaid action thereof maintained againſt him the ſaid defendant, becauſe he ſaith, that at the time of the commencing the ſaid action, he the ſaid defendant was inhabiting and reſiding within the hundred of Blackheath in the county of Kent, and was liable to be warned and ſummoned before the court of requeſts for the hundred of Blackheath, of Bromley, and Bechenham of Roxeley, otherwiſe Roxley, and of Little and Leſſneſs, in the county of Kent; and that the ſaid defendant was not, at the time of the commencing the ſaid action, indebted unto the ſaid plaintiff in any ſum or ſums of money, amounting to above the ſum of forty ſhillings; and this he the ſaid defendant is ready to verify: wherefore he prays judgment if the ſaid P. ought to have his aforeſaid action maintained againſt the ſaid defendant.

V. LAWES.

Non aſſumpſit infra ſex annos, to 1ſt, to 2d, 3d, and 4th. *Non aſſumpſit* generally (except as to fifteen ſhillings and upwards, to the whole of fourth promiſes the Court of Conſcience Act for the *Tower Hamlets*.

BECMAN *at ſuit of* PARROT. } FIRST, *Non aſſumpſit infra ſex annos*, as to the firſt promiſe; to the ſecond, third, and laſt promiſes, and to the fourth promiſe, except fifteen ſhillings, *non aſſumpſit* generally; and to the fourth promiſe, and alſo to the fifth as to fifteen ſhillings, the following plea: And as to the promiſe and undertaking in the ſaid declaration fourthly above mentioned; and alſo as to the ſaid promiſe and undertaking in the ſaid declaration fifthly above mentioned; and as to the ſaid fifteen ſhillings, parcel of the ſaid ten pounds therein contained, the ſaid defendant ſays, that the ſaid plaintiff *actio non*; becauſe he ſays that by a certain act of parliament, made at a ſeſſions of parliament holden at Weſtminſter in the county of Middleſex, on the ſixteenth of November A. D. 1749, entituled, "An Act for the more eaſy and ſpeedy Recovery of ſmall Debts within the Tower Hamlets," it was and is amongſt other things enacted, "that no action or ſuit for any debt, not amounting to the ſum of forty ſhillings, and recoverable by virtue of the ſaid act in the court of requeſts for the Tower Hamlets, ſhould be brought againſt any perſon reſiding or inhabiting within the juriſdiction thereof in any other court whatſoever;" as by the ſaid act amongſt other things more fully appears: And the ſaid defendant further ſays, that the damages which the ſaid plaintiff hath ſuſtained, as well by reaſon of the non-performance of the ſaid promiſe and undertaking in the ſaid declaration fourthly

fourthly above mentioned, as by reaſon of the non-performance of the ſaid promiſe and undertaking in the ſaid declaration fifthly above mentioned, as to the ſaid fifteen ſhillings parcel of the ſaid ten pounds therein contained, do not amount in the whole to forty ſhillings; and that the ſaid defendant at the time of exhibiting, &c. and long before, was and from thence hitherto hath been and ſtill is a perſon reſiding and inhabiting within the liberty of the Tower Hamlets aforeſaid, and within the juriſdiction of the court of requeſts for the ſaid Tower Hamlets, that is to ſay, at the pariſh of St. Mary, Whitechapel, in the ſaid county of Middleſex: and the ſaid defendant further ſaith, that the ſaid defendant, at the time of exhibiting, &c and long before, was liable to be warned and ſummoned by the ſaid plaintiff before the court of requeſts for the ſaid Tower Hamlets, and that ſaid court of requeſts might by their judgment have compelled the ſaid defendant to have ſatisfied the ſaid plaintiff the damages which he had ſuſtained, as well by reaſon of the non-performance of the ſaid promiſe and undertaking in the ſaid declaration fourthly above mentioned, as by reaſon of the non-performance of the ſaid promiſe and undertaking fifthly above mentioned as to the ſaid fifteen ſhillings, parcel of the ſaid ten pounds therein contained, and this, &c. wherefore, &c. if, &c.

PARROT *againſt* BECHAM } And the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by him pleaded in bar as to the ſaid promiſe and undertaking of the ſaid defendant in the ſaid declaration firſt above mentioned, ſays, that he by any thing above in that plea alledged ought not to be barred from having his aforeſaid action in that behalf maintained againſt the ſaid defendant, becauſe he ſays that the ſaid cauſe of action did accrue to the ſaid plaintiff within ſix years next before the exhibiting of the ſaid bill of the ſaid plaintiff, and this he prays may be enquired of by the country, and the ſaid defendant doth the like, &c. And as to the ſaid plea of the ſaid defendant by him above pleaded in bar as to the promiſe and undertaking in the ſaid declaration fourthly above mentioned, and alſo as to the ſaid promiſe and undertaking in the ſaid declaration fifthly above mentioned, as to the ſaid fifteen ſhillings, parcel of the ſaid ten pounds therein contained, the ſaid plaintiff ſays, that he, by any thing in that plea above alledged, ought not to be barred from having his aforeſaid action in that behalf maintained againſt the ſaid defendant, becauſe he ſays, that after the making of the ſaid promiſe and undertaking in the ſaid declaration fourthly above mentioned, and after the making the ſaid promiſe and undertaking in the ſaid declaration fifthly mentioned, as to the ſaid fifteen ſhillings, that is to ſay, on the day of in the year of the reign of our lord the now king, he the ſaid plaintiff, for the recovery of his damages by him ſuſtained on occaſion of the not performing of the ſaid fourth promiſe and undertaking, and on occaſion of the not performing of the ſaid fifth promiſe and undertaking as to the fifteen ſhillings amongſt

Replication thereto, taking iſſue on the ſtatute of limitations as to the firſt promiſe, and as to the plea of court of conſcience act, ſhewing that plaintiff ſued defendant in B. R. by bill of Middleſex, and that defendant appeared to the ſame and denying that defendant reſided within the juriſdiction of the court of conſcience.

ther things, ſued and proſecuted out of the court of our lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of Middleſex), a certain precept of our ſaid lord the king, called a Bill of Middleſex, directed to the ſheriff of Middleſex, by which ſaid precept the ſaid then ſheriff of Middleſex was commanded to take the ſaid defendant if he might be found in his bailiwick, and to keep him ſafely ſo that he might have his body before our lord the king at Weſtminſter on next after , to anſwer to the ſaid plaintiff in a plea of treſpaſs, and that the ſaid ſheriff ſhould then have there that precept; at which day before our lord the king at Weſtminſter came the ſaid plaintiff in his own perſon and offered himſelf againſt the ſaid defendant in the aforeſaid plea, and the ſaid defendant did not come; and the ſheriff, to wit, A. B. and C. D. then the ſheriff of the ſaid county of Middleſex, returned that the ſaid defendant was not found in his bailiwick, therefore, as before, the ſheriff was commanded to take the defendant and keep him ſafely, ſo that he might have his body before our lord the king at Weſtminſter on next after , to anſwer to the ſaid plaintiff in the ſaid plea of treſpaſs, the ſame day was given by the ſaid court there to the ſaid plaintiff, there and at which day before our lord the king at Weſtminſter came the ſaid plaintiff in his own perſon, and the ſheriff did not ſend the ſaid precept, nor had he done any thing thereupon; and the ſaid defendant did not come, therefore &c. (as before, award two more precepts, and defendant appeared at the laſt); and thereupon the ſaid plaintiff, in Trinity term, in the twenty-fourth year of the reign of our ſaid lord the now king, exhibited his aforeſaid bill in the ſaid court of our ſaid lord the king, before the king himſelf, againſt the ſaid plaintiff, for the recovery, amongſt other things, of his damages by him ſuſtained on occaſion of the not performing of the ſaid fourth promiſe and undertaking, and on occaſion of the not performing of the ſaid fifth promiſe and undertaking, as to the ſaid fifteen ſhillings: And the ſaid plaintiff further ſaith, that the ſaid defendant, at the time of the ſuing forth of the ſaid precept firſt above mentioned, was not a perſon reſiding or inhabiting within the juriſdiction of the ſaid court of requeſts for the ſaid Tower Hamlets, or liable to be warned or ſummoned by the ſaid plaintiff before the ſaid court of requeſts for the ſaid Tower Hamlets; and this he is ready to verify; wherefore he prays judgment and his damages, on occaſion of the not performing of the ſaid fourth promiſe and undertaking, and of the ſaid fifth promiſe and undertaking, as to the ſaid fifteen ſhillings, againſt the ſaid defendant.

Duplicate to ſaid anſwer.

AND the ſaid defendant, by his attorney, comes and defends the wrong and injury, when &c. and ſays, that he cannot deny

deny the ſaid action of the ſaid plaintiff, nor but that the ſaid defendant did undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him, nor but that the ſaid plaintiff ought to recover againſt him the ſaid defendant his damages ſuſtained on occaſion of the not performing of the ſeveral promiſes and undertakings of him the ſaid defendant; but the ſaid defendant, in purſuance of a ſtatute made at Weſtminſter in the county of Middleſex, in the fourteenth year of the reign of our lord the now king, intituled, "An Act for the Relief of Inſolvent Debtors, and for the Relief of Bankrupts in certain Caſes," in diſcharge of his perſon from the execution of the judgment to be obtained againſt him in this behalf by the ſaid plaintiff in this action, according to the form and direction of that ſtatute, ſays, that he the ſaid defendant, on, &c. was actually a priſoner in his majeſty's priſon of, &c. in L. aforeſaid, to wit, in the pariſh and ward aforeſaid, at the ſuit of, &c. and that he the ſaid defendant afterwards, to wit, at the general quarter ſeſſions of the peace, was duly diſcharged according to and by virtue of the ſaid ſtatute: And the ſaid defendant further ſays, that the ſaid ſeveral cauſes of action in the ſaid declaration mentioned, and each and every of them, did accrue to the ſaid plaintiff before, &c.; and this, &c. wherefore, &c. and that his perſon be diſcharged from the execution of the judgment to be obtained againſt him by the ſaid plaintiff in this action, according to the form of the ſaid ſtatute, &c.

J. MORGAN.

(PROCEED as above to this mark ‖, then as follows); that he the ſaid defendant before the firſt day of January, to wit, on, &c. A. D. 1775, was arreſted and in actual cuſtody of an officer belonging to the ſheriff of Middleſex for one hundred pounds, at the ſuit of one A. B. by virtue of a certain writ of our lord the now king, called a *capias*, iſſuing out of the court of our lord the king of the bench at Weſtminſter in the county of Middleſex, in a certain plea, to wit, a plea of treſpaſs on the caſe upon promiſes, and was held to bail thereon for [illegible] pounds; and that he the ſaid defendant afterwards and before the twenty-ſixth day of, &c. A. D. 1776, to wit, on, &c. did ſurrender himſelf in diſcharge of his bail, and was thereupon duly committed to his majeſty's priſon of the Fleet in London aforeſaid, to wit, in the pariſh and ward aforeſaid, at the ſuit of the ſaid A. B.; and that he the ſaid defendant afterwards, to wit, at, &c. (every thing ſubſequent as in preceding plea).

J. MORGAN.

Duplicate, as having been in cuſtody of an officer, and ſurrendered in diſcharge of bail, &c

COPELAND *at the ſuit of* CLARK, GENT. } AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he cannot deny the aforeſaid action of the ſaid John, nor but that the ſaid writ-

(a) Plea, diſcharge of priſoner under compulſive clauſe of inſolvent act, 32 G. 3. c 37. ſ.

(a) This plea is no debt, but by ſaying promiſe *plaintiff*, as in pages 196, 197, 46. inſtead, the plea will do in *aſſumpſit*.

ing-obligatory is the deed of the ſaid W. nor but that he owes to the ſaid John the ſaid twenty pounds, in manner and form as the ſaid John hath above thereof complained againſt him, nor but that he the ſaid John ought to recover his aforeſaid debt and his damages on occaſion of the detaining of that debt againſt him the ſaid W. but in purſuance of an act of parliament made at Weſtminſter, on, &c. in the firſt year of the reign of, &c. intituled "An act for the relief of inſolvent debtors," and in diſcharge of his perſon from the execution of his judgment, to be obtained againſt him in this behalf by the ſaid plaintiff in this action, according to the form and direction of that act, ſays, that he the ſaid W. on, &c. at, &c. was, and from thence continually until and at the time of his diſcharge hereafter mentioned, remained a priſoner in his majeſty's priſon in and for the county of Surry, commonly called the county goal, at Southwark, in the ſaid county of Surry, at the ſuit of B. B. charged in execution at his ſuit for fifteen pounds debt, and ſixty-three ſhillings damages, on a judgment recovered by the ſaid B. B. againſt the ſaid W. in the court of our lord the king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the county of Middleſex), for the ſaid debt and damages, and that he the ſaid W. afterwards, to wit, at the general quarter ſeſſions of the peace of our lord the now king, holden at K. in and for the ſaid county of S. on, &c. before certain then juſtices of our lord the now king, aſſigned to keep the peace of our lord the now king in and for the ſaid county of S. and alſo to hear, &c. committed in the ſaid county of S. was in due manner at the requeſt and compulſion of the ſaid B. B. diſcharged according to and by virtue of the ſaid act: and the ſaid W. further ſays, that the ſaid cauſe of action in the ſaid declaration mentioned, accrued to the ſaid John before the twenty-fifth day of, &c. to wit, at, &c.: and this, &c. wherefore he prays judgment, and that his perſon may be diſcharged from the execution of the ſaid judgment to be obtained againſt him by the ſaid John in his action, according to the form of the ſaid act. W. DAVY.

Plea of diſcharge under an inſolvent act, and replication.

ACTION for goods ſold and delivered, &c.; plea, 1ſt, *non aſſumpſit*, and concludes to the country; 2d, *infra ſex annos*, and concludes with verification; 3d, And for further plea in this behalf, the ſaid Henry by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that he cannot deny the aforeſaid action of the ſaid William, nor but that he the ſaid Henry did undertake and promiſe in manner and form as the ſaid William hath above thereof complained againſt him, nor but that he the ſaid William ought to recover his damages, on occaſion of the not performing the ſaid ſeveral promiſes and undertakings aforeſaid againſt him the ſaid Henry, but the ſaid Henry in purſuance of an act of parliament, made at Weſtminſter, in the county of Middleſex, in the eighteenth year of the reign of our

18. Geo. 3. c. 52.

our lord the new king, intitled "An act for the relief of insolvent debtors, and for the relief of bankrupts in certain cases," in discharge of his person from the execution of the judgment to be obtained against him in that behalf, by the said William in this action, according to the form and direction of that act, says, that he the said Henry on the tenth day of March, in the year of Our Lord 1778, was in foreign parts beyond the seas, to wit, in Holland; and that he the said Henry at the general quarter sessions of the peace of our sovereign lord the king, held at Kingston-upon-Thames, by adjournment, in and for the county of Surry, on Tuesday the third day of November, in the year of Our Lord 1778, was duly discharged according to the said act; and the said Henry further says, that the several sums of money in the said declaration mentioned, and for which this action is brought, were contracted and due to the said William before the said tenth day of March, in the year of Our Lord 1778, to wit, at Westminster, in the county of Middlesex; and this he is ready to verify: wherefore he prays judgment, and that his person may be discharged from the execution of the judgment to be obtained against him by the said William in this action, according to the form of the said act, &c. GEO. WOOD.

Replication to 1st plea, and issue.

And the said William, as to the said plea of the said Henry by him first above pleaded in bar, and whereof he hath put himself upon the country, doth the like, &c. and as to the said plea of the said Henry, by him secondly above pleaded in bar, he the said William says, that he ought not by reason of any thing therein alledged, to be barred from having and maintaining his aforesaid action against him the said Henry, because he says, that he the said Henry did, within six years next before the exhibiting the bill of the said William against the said Henry, undertake and promise in manner and form as the said William hath above thereof complained against him the said Henry, and this he the said William prays may be enquired of by the country: *And* the said William, as to the said plea of the said Henry by him lastly above pleaded, in bar of execution of the debt and damages aforesaid against the person of the said Henry, says, that he ought not by reason of any thing in that plea contained, to be precluded from having and maintaining his aforesaid action against him the said Henry, because he says, that he the said Henry was not duly discharged according to the form of the said act of parliament in the said last-mentioned plea mentioned; and this he the said William prays may be enquired of by the country, &c.

to 2d issue.

to 3d issue.

WESTAL *at suit of* FAULKNER. } AND the said Richard, by John Sterling, his attorney, comes and defends the wrong and injury, when, &c. and says, that he cannot deny the said action of the said Thomas, nor but that he the said Richard undertook in manner and form as the said Thomas above complains

Discharge under the act of insolvency as a prisoner in custody.

againſt him; nevertheleſs the ſaid Richard ſaith, that the ſaid Thomas ought not to have any action againſt the *perſon* of the ſaid Richard for or for any damage to be adjudged to the ſaid Thomas in this action, by reaſon of the non-performance of the ſaid promiſe in the ſaid declaration above ſuppoſed to be made, becauſe he ſaith, that the ſeveral promiſes and undertakings in the ſaid declaration mentioned, were made before the firſt day of January, in the year of Our Lord 1747, mentioned in a certain act of parliament made at a ſeſſions of parliament of our now lord the king, holden at Weſtminſter, in the county of Middleſex, on the tenth day of November, in the, &c. intituled "An act for relief of inſolvent debtors," and the ſaid Richard ſays, that he the ſaid Richard, on the ſaid firſt day of January, in the ſaid year, &c. was actually a priſoner in the compter in the town and borough of Southwark, in the county of Surry, at the ſuit of John Davenport, and that he the ſaid Richard afterwards, to wit, at the general quarter ſeſſions of the peace of our ſaid lord the king, held at the court-houſe on St. Margaret's-hill, in and for the ſaid town and borough, on Wedneſday the fifth day of October, in the twenty-ſecond year, &c. before Sir Robert Ladbrooke, knight, mayor of the city of London, Sir Robert Bayliſs, knight, one of the aldermen of the ſaid city, and others, their fellow juſtices of our ſaid lord the king, appointed to preſerve the peace of our ſaid lord the king within the ſaid town and bor[illegible]ſo to hear and determine divers felonies, treſpaſſes, [illegible]f felons committed within the ſaid town and [illegible] according to that act; and the ſaid R. [illegible] wherefore he prays judgment if the ſaid [illegible]s ought to have any execution againſt the perſon of him [illegible] Richard, or for any damages to be adjudged to the ſaid [illegible] in this action, by reaſon of the non-performance of the ſaid [illegible] and undertakings in the ſaid declaration mentioned, &c.

EDWARD BOOTLE.

Replication taking iſſue thereon.

And the ſaid Thomas prays a day to inquire to the ſaid plea, and it is granted him by the court, and thereupon a day is given to the parties aforeſaid in court here, on the octaves of the holy trinity, at Weſtminſter, on Tueſday next after eight days from, &c. to wit, for the ſaid Thomas to rejoin to the ſaid plea, and then to reply to the ſame as he ſhould be adviſed; at which day the ſaid parties came, by their attornies, before our ſaid ſovereign lord the king, at Weſtminſter; and the ſaid Thomas ſays, that by any thing by the ſaid Richard above in his plea alledged, he the ſaid Thomas ought not to be barred from having execution againſt the perſon of the ſaid Richard for his damages, which he the ſaid Thomas hath ſuſtained by the non-performance of the ſeveral promiſes and undertakings of the ſaid Richard in the ſaid declaration above ſpecified; becauſe he ſays, that the ſaid Richard, on the firſt day of January, in the year, &c. was not actually a priſoner in the compter, in the town and borough of Southwark, in the county

county of Surry, at the ſuit of John Davenport, in the ſaid plea mentioned, nor was the ſaid Richard, at the general quarter ſeſſions of the peace of our ſaid lord the king, held as aforeſaid, diſcharged according to the direction of the ſaid act in manner and form as the ſaid Richard in and by his plea hath above alledged; and this the ſaid Thomas prays may be enquired of by the country. G. NARES,

GIBSON *at ſuit of* PHILPOT. } AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he the ſaid plaintiff, *actio non*; becauſe he ſays, that he ſaid defendant cannot deny but that he did undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him the ſaid defendant; but the ſaid defendant further ſaith, that the ſeveral cauſes of action in the declaration aforeſaid mentioned, accrued, and each and every of them did accrue unto the ſaid plaintiff before the ſixteenth of July 1765, to wit, at London, &c. aforeſaid; and the ſaid defendant further ſaith, that on the firſt day of July 1765, mentioned in a certain act of parliament made at the parliament of our lord the king, holden at Weſtminſter, in the county of Middleſex, on the ninth day of May 1761, and from thence continued by ſeveral prorogations to the tenth of January, in the fifth year of the reign of his preſent Majeſty, entitled "An act, &c." the ſaid plaintiff was a priſoner in his majeſty's priſon of and for the county of Surry, commonly called the king's-bench priſon, ſituate at Southwark, in the county of Surry; and that he the ſaid plaintiff, as a perſon within the intent and meaning of the ſaid act, and as a perſon ſeeking relief under the ſaid act, and as being entitled to take and receive the benefit of the ſaid act as a priſoner in the ſaid priſon, was at the general quarter ſeſſions of the peace of our lord the now king, holden at Guildford, in and for the county of Surry aforeſaid, on the tenth day of July A. D. 1765, aforeſaid, before certain then juſtices of our ſaid lord the now king, aſſigned to keep the peace of our lord the king in and for the county of Surry aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed in the ſaid county of Surry, by force of and according to the form of the aforeſaid act, diſcharged, and by means of ſuch diſcharge the eſtate and effects, both real and perſonal, whereof the plaintiff was at the time of ſuch his diſcharge ſeiſed or poſſeſſed, or to which he was in any manner whatſoever entitled, and all right of action which he had againſt any perſon whatſoever, by means of the not performing of any promiſe or promiſes whatſoever, as to the payment of any money due from any perſon whatſoever to the ſaid plaintiff before the ſaid ſixteenth of July 1765, was, by force and virtue of the ſaid act, legally veſted in Francis Lawſon, eſquire, then and ſtill being clerk of the peace of and for the ſaid county of Surry, for the benefit of the creditors of the ſaid plaintiff, as in the ſaid act is particularly

Plea that plaintiff was diſcharged under an inſolvent act, and his eſtate and right of action veſted in the clerk of the peace.

ticularly mentioned with reſpect to priſoners ſeeking relief under and taking the benefit of the ſaid act, and that by force and virtue of the ſaid act, all right of action of the ſaid plaintiff which he had before ſuch his damages veſted in the ſaid F. Lawſon, eſquire, as ſuch clerk of the peace of and for the ſaid county of Surry, for the purpoſe aforeſaid in that behalf before mentioned, and in the ſaid act in ſuch caſes directed; and that he the ſaid plaintiff was, on ſuch diſcharge of him the ſaid plaintiff, by force and virtue of the ſaid act, then, to wit, on the ſaid ſixteenth of July, A. D. 1765, aforeſaid, wholly diveſted of ſuch right of action, to wit, at London, &c. aforeſaid; and this, &c. wherefore, &c. if, &c.

Plea of a duplicate of diſcharge under an inſolvent act, as a fugitive.

J. F. } AND the ſaid defendant, by A. B. his attorney,
at ſuit of } comes and defends the wrong and injury, when, &c.
S. B. } and ſays, that he cannot deny the aforeſaid action of the ſaid plaintiff, but that the ſaid defendant did undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him; yet that the ſaid plaintiff ought not to have execution for any damages to be recovered in this action againſt or upon the perſon of him the ſaid defendant, becauſe he ſaith, that the ſaid ſeveral cauſes of action in the ſaid declaration mentioned, accrued, and each and every of them accrued unto the ſaid defendant before the day of 17 , mentioned in a certain act, made at a parliament of our lord the king, at Weſtminſter, in the county of Middleſex, by prorogation on the day of 17 , and in the year of the reign of our ſovereign lord the now king, entitled "An act, &c." and that the ſaid defendant was actually abroad beyond the ſeas in foreign parts, to wit, at, &c. in the kingdom of, &c. on the ſaid day of 17 , in the ſaid declaration mentioned, as a fugitive for debt, and was a perſon within the intent and meaning of the ſaid act entitled to take and receive the benefit of the ſaid act as a fugitive; and that he the ſaid defendant afterwards, to wit, on the day of in the year of Our Lord , returned into this kingdom, to wit, at, &c. (the county or city where the priſon is to which he ſurrendered), and then and there, to wit, on the day and year laſt-mentioned, at, &c. (as before), to wit, at, &c. (the venue in the declaration), ſurrendered himſelf to the cuſtody of the keeper of a certain priſon of our lord the king, called, &c. in, &c. (the place where the priſon is ſituate), to wit, at, &c. (the venue in the declaration); and that he the ſaid defendant afterwards, to wit, at the general quarter ſeſſions (as in the duplicate), of the peace of our ſovereign lord the king, held at, &c. by adjournment, in and for the county (or city) of, &c. on Wedneſday the day of 17 , before certain then juſtices of our ſaid lord the now king, aſſigned to keep the peace of our lord the king in and for the ſaid county (or city) of, &c. and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed in the ſaid county or city of, &c. to wit, at, &c. (venue in declaration), was in due manner, and

and by force and virtue, and according to the ſaid act diſcharged; and this he the ſaid defendant is ready to verify: wherefore, &c. prays judgment if the ſaid plaintiff ought to have any execution of the damages to be adjudged to him in the behalf on or againſt the *perſon* of the ſaid defendant, &c. J. MORGAN.

STATUTE OF LIMITATIONS.

JONES, &c. EXECUTORS, *verſus* ARTHUR. } AND the ſaid plaintiffs, executors as aforeſaid, as to the ſaid plea of the ſaid defendant, by him ſecondly above pleaded in bar, *preclusi non*; becauſe they ſay, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, the ſaid J. J. in his lifetime, to wit, on, &c. for the recovery of his damages by him ſuſtained on occaſion of the not performing the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, ſued and proſecuted out of the court of our lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the county of Middleſex), a certain precept of our ſaid lord the king, called a bill of Middleſex, againſt the ſaid defendant, whereby the then ſheriff of Middleſex was commanded that he ſhould take the ſaid defendant, if he ſhould be found within his bailiwick, and that the ſaid ſheriff ſhould keep him the ſaid defendant ſafely, ſo that he might have his body before the ſaid the king, at Weſtminſter, on, &c. next, &c. to anſwer the ſaid J. J. in a plea of treſpaſs, and alſo to a bill of the ſaid J. J. againſt the ſaid defendant for forty-four pounds, upon promiſes, according to the cuſtom of the ſaid the king, before the king himſelf to be exhibited, and that the ſaid ſheriff ſhould then have there that precept, which ſaid precept afterwards and before the delivery thereof to the ſaid then ſheriff of Middleſex to be executed, to wit, on, &c. at, &c. he the ſaid J. J. in his lifetime duly cauſed to be indorſed for bail for twenty-two pounds, according to the form of the ſtatute in ſuch caſe made and provided, and which ſaid precept ſo ſued, proſecuted, and indorſed as aforeſaid, was ſo ſued and proſecuted by the ſaid J. J. out of the ſaid court, and indorſed for bail, with intent that the ſaid defendant might by virtue thereof be arreſted, and compelled to put in ſpecial bail in the ſaid court at the return of the ſaid precept, at the ſuit of the ſaid J. J. and that thereupon the ſaid J. J. might, according to the cuſtom of the ſaid court, exhibit his bill in the ſaid court againſt the ſaid defendant, in a plea of treſpaſs on the caſe, for the recovery of the damages by him ſuſtained on occaſion of the not performing the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; at which day of the return of the ſaid precept; that is to ſay, on, &c. which

(*a*) Replication to a plea of the ſtatute of limitations, that the plaintiff's teſtator ſued out a bill of Middleſex, and promiſe within ſix years next before the ſuing out that precept.

(*a*) See Pleas by *Executors*, poſt.

was

was in the fifteenth year of, &c. before our ſaid lord the king, at Weſtminſter, came the ſaid J. J. by C. D. his attorney, and offered himſelf againſt the ſaid defendant in the ſaid plea; and the ſaid defendant alſo at that day appeared in the ſaid court here according to the tenor of the precept aforeſaid, to anſwer to the ſaid J. J. according to the exigency of the ſaid writ: and thereupon the ſaid J. J. afterwards, to wit, on, &c. exhibited his bill, and by his ſaid attorney declared againſt the ſaid defendant, in a plea of treſpaſs on the caſe, on promiſes of and for the not performance of the ſame identical promiſes and undertakings in the aforeſaid declaration mentioned, and divers proceedings were had in the plea aforeſaid, and the ſame plea was continued depending and undetermined until the ſaid J. J. afterwards, and before the ſaid plea was determined, and within ſix years next before the day of exhibiting of the bill of the ſaid plaintiffs, as executors as aforeſaid, againſt the ſaid defendant, to wit, on, &c. at, &c. died; and thereupon the proceedings aforeſaid ceaſed and were diſcontinued; and the ſaid plaintiffs, as executors as aforeſaid, to wit, in Eaſter term, in the ſixteenth year, &c. impleaded the ſaid defendant in manner and form aforeſaid: and the ſaid plaintiff further ſays, that the ſaid defendant did, within ſix years next before ſuing and proſecuting of the ſaid precept of the ſaid J. J. in his lifetime, againſt him the ſaid defendant ſo ſued and proſecuted as aforeſaid, undertake and promiſe in manner and form as the ſaid plaintiffs hath above thereof complained againſt him the ſaid defendant; and this, &c. wherefore, &c. and their damages by them ſuſtained, on occaſion of the not performing the ſaid ſeveral promiſes and undertakings to be adjudged to them, &c.

J. MORGAN.

(a) Replication to *non aſſumpſit infra ſex annos*, that the inteſtate continued at ſea till his death, and that within ſix years after his deceaſe, plaintiffs exhibited a bill as adminiſtrator.

AND the ſaid plaintiff, as to the ſaid plea, &c. *præcludi non*; becauſe he ſays, that at the reſpective times of making the ſeveral promiſes and undertakings in the ſaid declaration mentioned, the ſaid J. S. now deceaſed, was abroad in foreign parts beyond the ſeas, to wit, at, &c. in, &c. and the ſaid J. S. continued and remained abroad in foreign parts beyond the ſeas, from thence until and at the time of his deceaſe; and that the ſaid plaintiff, as adminiſtrator as aforeſaid, within ſix years next after the deceaſe of the ſaid J. S. to wit, in the term of, &c. now laſt paſt, exhibited his ſaid bill againſt the ſaid plaintiff, as adminiſtrator as aforeſaid; and this, &c.; wherefore, &c. and his damages on occaſion of the non-performing of the promiſes and undertakings aforeſaid to be adjudged to him, &c.

J. WALLACE.

Rejoinder.

Says, that the plaintiff aforeſaid did not exhibit his ſaid bill againſt him ſaid defendant within ſix years next after the death

(a) See *Adminiſtrators, &c. Pleas by*, poſt.

of

of the ſaid J. S. as the ſaid plaintiff hath above in his plea ſo pleaded by way of reply alledged; and of this he puts himſelf upon the country.

PRECLUDI non; becauſe they ſay, at the ſaid time when the ſaid ſeveral cauſes of action in the ſaid declaration mentioned, and each and every of them, did accrue, the ſaid R. S. was *non compos mentis*, and ſo continued for a long time, to wit, until the time of his death, which happened on, &c. and that they the ſaid plaintiffs, within ſix years next after the death of the ſaid R. S. to wit, on, &c. in the tenth year of, &c. ſued and proſecuted their original writ aforeſaid, to wit, at, &c.; and this, &c. wherefore, &c. if, &c.

Replication to a plea of *non accrevit*, that the plaintiff's teſtator was *non compos mentis* for a long time before and at his death, and that the plaintiffs ſued out their original writ within, &c.

NASH GROSE.

POLHILL, Eſquire, Executor, &c. *againſt* GODBOLD, Executor.

AND the ſaid Edward, as to the ſaid plea of the ſaid Nathaniel by him above pleaded in bar, ſays, that he ought not to be barred from having and maintaining his aforeſaid action thereof againſt him, becauſe he ſays, that the ſaid Nathaniel did, within ſix years next before the ſuing out of the original writ of the ſaid Edward, undertake and promiſe in manner and form as the ſaid Edward hath above thereof complained againſt him; and this he prays may be enquired of by the country; and the ſaid Nathaniel doth the like, therefore, &c.

Replication, that the cauſe of action aroſe within ſix years.

V. LAWES.

HAMILTON *againſt* DAVIS.

AND the ſaid plaintiff, as to the ſaid plea, &c. ſays, that he the ſaid plaintiff ought not, by reaſon of any thing by the ſaid defendant in that plea above alledged, to be barred from having and maintaining his aforeſaid action thereof againſt him, becauſe he ſays, that at the time when the ſaid ſeveral cauſes of action in the ſaid declaration firſt accrued to ſaid plaintiff, he the ſaid plaintiff was reſident and reſiding beyond the ſeas, to wit, at Dublin in the kingdom of Ireland, and afterwards, to wit, on the firſt of January 1781, firſt arrived within the kingdom of England, to wit, at Weſtminſter in the county of Middleſex: And the ſaid plaintiff further ſaith, that within ſix years next after ſuch his firſt arrival, the ſaid plaintiff duly exhibited his ſaid bill againſt the ſaid defendant, to wit, at Weſtminſter aforeſaid, in the county of Middleſex, in the court of our ſaid lord the king, before the king himſelf, the ſaid court being then and there held at Weſtminſter aforeſaid, in the county aforeſaid; and this, &c. wherefore he prays judgment and his damages on occaſion of the not

Replication to a plea of the ſtat. of limitations, that plaintiff was beyond the ſeas when the action accrued, and exhibited, &c. within ſix years after his arrival. See Smith executor, &c. v. Hill, executor, &c. 1. Wilſ. 134.

not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, to be adjudged to him, &c.

H. RUSSEL.

Replication to a plea of the ſtatute of limitations to action at the ſuit of plaintiff as executrix, that their teſtator ſued for the ſaid debt, and proceeded ſo far as plea and died, whereupon the action was diſcontinued, and that defendant promiſed within ſix years after his ſuit.

And as to the ſaid plea of the ſaid defendant by him ſecondly above pleaded in bar, ſay [*precludi non*]; becauſe they ſay, that after the making of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, the ſaid Jones (the teſtator) in his lifetime, to wit, on the twelfth of February 1775, for the recovery of his damages by him ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, ſued and proſecuted out of the court of our lord the now king before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of Middleſex), a certain precept of our lord the king called a bill of Middleſex, againſt the ſaid defendant, whereby the then ſheriff of Middleſex was commanded that he ſhould take the ſaid defendant if he ſhould be found in his bailiwick, and that the ſaid ſheriff ſhould keep him the ſaid defendant ſafely, ſo that he might have his body before the lord the king at Weſtminſter on Wedneſday next after fifteen days from the day of Eaſter then next following, to anſwer the ſaid J. J. in a plea of treſpaſs, and alſo to a bill of the ſaid J. J. againſt the ſaid defendant for forty-four pounds upon promiſes, according to the cuſtom of the court of the lord the king before the king himſelf, to be exhibited: and that the ſaid ſheriff ſhould then have there that precept; which ſaid precept afterwards, and before the delivery thereof to the ſaid then ſheriff of, &c. to be executed, to wit, on the twenty-fifth of February 1775, at London, &c. aforeſaid, he the ſaid J. J. in his lifetime, duly cauſed to be indorſed for bail for twenty-two pounds, according to the form of the ſtatute in ſuch caſe made and provided, and which ſaid precept, ſo ſued, proſecuted, and indorſed as aforeſaid, was ſo ſued and proſecuted by the ſaid J. J. out of the ſaid court, and indorſed for bail, with intent that the ſaid defendant might, by virtue thereof, be arreſted and compelled to put in ſpecial bail in the ſaid court, at the return of the ſaid precept; and that thereupon the ſaid J. J. might, according to the cuſtom of the ſaid court, exhibit his bill in the ſaid court againſt the ſaid defendant in a plea of treſpaſs on the caſe, for the recovery of his damages by him ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; at which day of the return of the ſaid precept, that is to ſay, on Wedneſday next after, &c. in Eaſter Term, which was in the fifteenth year of the reign of the lord the now king, before our lord the king at Weſtminſter, came the ſaid J. J. by Samuel Rewenſereſs his attorney, and offered himſelf againſt the ſaid defendant in the ſaid plea: And the ſaid defendant alſo at that day appeared alſo in the ſaid court here, according to the tenor of the precept aforeſaid, to anſwer to the ſaid J. J. according to the exigency of the ſaid precept; and thereupon the ſaid John Jones,

after

afterwards, to wit, on the ſaid Wedneſday next after, &c. in Eaſter Term in the fifteenth year aforeſaid, exhibited his bill, and by his ſaid attorney declared againſt the ſaid defendant in a plea of treſpaſs on the caſe, on promiſes of and for the not performing of the ſame identical promiſes and undertakings in the declaration aforeſaid mentioned, and divers proceedings were had in the plea aforeſaid, and the ſame plea was continued, depending, and undetermined until the ſaid J. J. afterwards, and before the ſaid plea was determined, and within ſix years next before the exhibiting of the bill of the ſaid plaintiffs as executors aforeſaid, againſt the ſaid defendant, to wit, on, &c. at, &c. aforeſaid, died; and thereupon the proceedings aforeſaid ceaſed and were diſcontinued; and the ſaid plaintiffs, as executors as aforeſaid, afterwards, to wit, in Eaſter Term in the ſixteenth year of the reign of our lord the now king, impleaded the ſaid defendant in manner and form aforeſaid: And the ſaid plaintiffs further ſay, that the ſaid defendant did, within ſix years next before the ſuing out and proſecuting of the ſaid precept by the ſaid J. J. in his lifetime, againſt the ſaid defendant, ſo ſued and proſecuted as aforeſaid, undertake and promiſe in manner and form as the ſaid plaintiffs hath above thereof complained againſt him the ſaid defendant; and this, &c.: wherefore they pray judgment and their damages by them ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings to be adjudged to them, &c.

J. MORGAN.

Plea of the ſtatute of limitations *non aſſumpſit infra ſex annos.*

AND now at this day, that is to ſay, on Friday next after eight days of St. Hilary in this ſame term, until which day the ſaid Edward had leave to impaſl to the ſaid bill, and then to anſwer the ſame, &c. as well the ſaid James by his ſaid attorney, as the ſaid Edward by Robert Heathcote his attorney, do come before our lord the king at Weſtminſter, and the ſaid Edward defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid James hath above thereof complained againſt him; and of this he puts himſelf upon the country; and the ſaid James doth the like: and for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatut in ſuch caſe made and provided, the ſaid Edward ſays, that the ſaid James ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that he the ſaid Edward did not, at any time within ſix years next before the exhibiting the bill of the ſaid James, undertake and promiſe in manner and form as the ſaid James hath above complained againſt him; and this he is ready to verify: wherefore he prays judgment if the ſaid James ought to have or maintain his ſaid action thereof againſt him, &c.

F. BULLER.

And

Replication taking iſſue.

And the ſaid James ſays, that he, by reaſon of any thing laſtly above alledged by the ſaid Edward in his ſaid iſſue, he the ſaid James ought not to be barred from having his aforeſaid action thereof maintained againſt the ſaid Edward, becauſe he the ſaid James ſays, that the ſaid Edward did, within ſix years next before the exhibiting of the bill of him the ſaid James, undertake and promiſe in manner and form as he the ſaid James hath above thereof complained againſt him; and this he the ſaid James prays may be enquired of by the country; and the ſaid Edward doth the like: therefore, as well to try this iſſue as the ſaid other iſſue between the ſaid parties above joined, &c. let a jury come before our lord the king at Weſtminſter in next after , and were, &c. and who neither to recognize, &c. becauſe as well, &c. the ſame day is given to the ſaid parties there, &c.

Plea. Firſt general iſſue. 2d, *Non aſſumpſit infra ſex annos.* 3d, a ſet off for goods ſold, &c.

EVANS, *at the ſuit of* JONES, ONE, &c. } AND the ſaid J by ney, comes and defends the wrong and injury, when, &c. and ſays, &c. [*General iſſue*]; and for further plea in this behalf the ſaid James ſays, by leave, &c. [*actio non*], becauſe he ſays, that he the ſaid James did not at any time within ſix years next, before the ſuing out the writ of the ſaid John, undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him the ſaid James; and this, &c. wherefore, &c. if, &c.: and for further plea in this behalf, the ſaid James, by like leave of, &c. ſays [*actio non*]; becauſe he ſays, that before and at the time of the ſuing out the writ of the ſaid John, the ſaid John was and ſtill is indebted to the ſaid James in more money than is due and owing from the ſaid James to the ſaid John, upon or by reaſon of the not performing the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, that is to ſay, in the ſum of twenty pounds, for divers goods, wares, and merchandizes by the ſaid James to the ſaid John, at his ſpecial inſtance and requeſt before that time ſold and delivered, and alſo in the further ſum of, &c. &c. (Money paid, &c. &c.) which ſaid ſeveral ſums of money ſo due and owing from the ſaid John to the ſaid James, greatly exceed the damages ſuſtained by the ſaid John, by reaſon of the non-performance of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, and ſo much of which ſaid ſeveral ſums of money ſo due and owing from the ſaid John to the ſaid James, as will be ſufficient to pay and ſatisfy the damages ſuſtained by the ſaid John by reaſon of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, the ſaid James is ready and willing, and hereby offers to ſet off, &c. deduct againſt ſuch damages, according to the form of the ſtatute in ſuch caſe made and provided; and this, &c.: wherefore, &c.

Drawn by MR. GRAHAM.

Replication ſimiliter to general iſſue, and iſſue on 2d and 3d pleas.

AND

AND the ſaid Robert P. as to the ſaid plea of the ſaid Robert R. by him laſtly above pleaded in bar, ſaith, that he by reaſon of any thing in that plea above alledged, ought not to be barred from having and maintaining his aforeſaid action againſt him, becauſe protesting that the ſaid Robert P was not nor is indebted to the ſaid Robert R. in any ſum of money whatſoever, as the ſaid Robert Rowley hath alledged; for replication in this behalf the ſaid Robert Payne, as to the ſaid ſeveral ſums of money in that plea mentioned above, ſuppoſed to be due from the ſaid Robert P. to the ſaid Robert Rowley, and which the ſaid Robert Rowley prays may be ſet off, and allowed againſt the ſaid ſeveral ſums of money due and owing from the ſaid Robert Rowley to the ſaid Robert Payne, according to the form of the ſtatute in ſuch caſe lately made and provided, ſaith, that the ſaid ſeveral ſuppoſed demands in th t plea mentioned, did not, nor did any of them accrue to the ſaid Robert Rowley at any time within ſix years next before the commencement of this ſuit; and this he is ready to verify: wherefore he prays judgment and his damages, by reaſon of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned to be adjudged to him, &c. W. BALDWIN.

Replication *ſolvit non actra-* *vit* within ſix years to a plea of ſet off.

EXECUTORS AND ADMINISTRATORS. (PLEAS BY)

AND the ſaid defendant, by A. B his attorney, comes and defends the wrong and injury, when, &c.; and as to the firſt, ſecond and laſt Counts in the ſaid declaration ſays, that he the ſaid defendant, *non aſſumpſit*; and as to the third Count in the ſaid declaration mentioned, he the ſaid defendant ſays, *actio non*; becauſe he ſays, that he the ſaid T. W. the teſtator, in his lifetime, to wit, on, &c. by his certain writing obligatory, ſealed with his ſeal, and to the court of our lord the king now here ſhewn, the date whereof is the day and year laſt aforeſaid, and then and there made for a true and juſt debt, acknowledged himſelf to be held and firmly bound to the ſaid defendant in the ſum of ten thouſand pounds of lawful, &c. to be paid to the ſaid defendant, when he the ſaid T. W. ſhould be thereto afterwards requeſted, with a certain condition thereto ſubſcribed, that if the ſaid T. W. his heirs, executors, or adminiſtrators ſhould and did, well and truly pay, or cauſe to be paid unto the ſaid defendant, his executors, adminiſtrators and aſſigns, the full ſum of five thouſand pounds, of good and lawful, &c. on or before, &c. together with lawful intereſt for the ſame, then that obligation to be void, or elſe to remain in full force and virtue, which ſaid writing obligatory at the time of the death of the ſaid T. W. was in full force and effect, not ſatisfied, diſcharged, or cancelled; and at the time of the death of the ſaid T. W. there was due to the ſaid defendant upon the ſaid writing

Debts of a ſuperior nature pleaded by an executor in bar to a declaration in *aſſumpſit*. 15. Geo. 3.

writing obligatory of the ſaid T. W. for principal and intereſt, the ſum of five thouſand and fifteen pounds ten ſhillings; and the ſaid defendant further ſays, that the ſaid T. W. the teſtator, in his lifetime, to wit, in, &c. at, &c. by his certain other writing obligatory, ſealed with his ſeal, and to the court of, &c. the date, &c. and then and there made for, &c. acknowledged himſelf to be held, &c. of one thouſand two hundred pounds, to be paid, &c. with a certain condition thereto ſubſcribed, that if the ſaid T. W. and one J. B. or either of them, their or either of their heirs, &c. ſhould and did, well and truly pay, or cauſe, &c. the full ſum of ſix hundred pounds of lawful, &c. on, &c. with lawful intereſt, which ſhould become due thereon, then that obligation to be void, or elſe, &c. which ſaid writing obligatory at the time of the death of the ſaid T. W. was in full force, &c. and at the time of the death of the ſaid T. W. there was due to the ſaid defendant, upon the ſaid laſt-mentioned writing obligatory of the ſaid T. W. for principal and intereſt, the ſum of ſix hundred and eight pounds: and the ſaid defendant further ſays, that the ſaid T. W. in his lifetime, to wit, on, &c. at, &c. made his laſt will and teſtament in writing, and thereby conſtituted and appointed the ſaid defendant executor thereof, and afterwards, to wit, on, &c. there died without altering or revoking the ſame, after whoſe death the ſaid defendant then proved the ſaid will, and took upon himſelf the burthen of the execution thereof; and the ſaid defendant further ſays, that he hath fully adminiſtered all and ſingular the goods and chattels, rights and credits which were of the ſaid T. W. at the time of his death, which have come to the hands of the ſaid defendant to be adminiſtered, and that he hath not any goods or chattels which were of the ſaid T. W. at the time of his death in his hands to be adminiſtered, nor had he any on the day of exhibiting, &c. or at any time ſince, excepting goods, &c. to the value of forty pounds, which are not ſufficient to ſatisfy and diſcharge the ſaid writing obligatory aforeſaid, or the ſaid monies due thereon, and which he the ſaid defendant retains in his hands towards ſatisfaction thereof: And this, &c. wherefore, &c. if, &c. F. BULLER.

Plea of plene adminiſtravit, generally by defendant ſued by a wrong name.

CHAMBERS, WIDOW, EXECUTRIX. *et the ſuit of* TARREL. } AND Expen Chambers, who is now ſued by the name of Experance Chambers, by John Jackſon, her attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid Samuel in his lifetime did not undertake and promiſe in manner and form as the ſaid Patrick above thereof complains againſt her, and of this ſhe puts herſelf upon the country, and the ſaid Patrick doth ſo likewiſe; and the ſaid Experance, by leave of the court here in this behalf firſt had and obtained, according to the form of the ſtatute in ſuch caſe lately made and provided, for further plea ſaith,

faith, that the faid Patrick ought not to have or maintain his faid action thereof againſt her; becauſe ſhe ſays, that ſhe hath fully adminiſtered all and ſingular the goods and chattels, which were the goods and chattels of the faid Samuel at the time of his death, which have come to her hands to be adminiſtered; and that ſhe the faid Experance hath not, nor on the day of ſuing forth of the ſaid original writ of the ſaid Patrick, nor at any time ſince, had any goods or chattels which were the goods and chattels of the ſaid Samuel at the time of his death in her hands to be adminiſtered; and this ſhe is ready to verify: wherefore ſhe prays judgment, if the ſaid Patrick ought to have or maintain his ſaid action thereof againſt her, &c. D. POOLE.

The defendant has not pleaded this name in abatement. I think he muſt now plead by the name which plaintiff has given her, and not by her true name of Experance.

FIRST, that teſtator, *non aſſumpſit*. 2d. *Non aſſumpſit* of teſtator, *infra ſex annos*. 3d And for further plea in this behalf, by like leave &c. the ſaid John ſays, that the ſaid William, *actionem*; becauſe he ſays, that the ſaid John never was executor of the laſt will and teſtament of the ſaid A. B. deceaſed, nor [illegible] and chattels which were the goods and chattels of the ſaid A. B. at the time of his death, as executor of his ſaid will; and this, &c. wherefore, &c. S. LE BLANC.

Plea (to a declaration againſt an executor for uſe and occupation, and common Counts), that defendant was not executor, nor ever adminiſtered,

Vide Comyn's Dig. tit. Pleader, 2 D 7.

Similiter to 1ſt plea. Iſſue on 2d. And the ſaid William, as to the ſaid plea of the ſaid John, by him laſtly above pleaded in bar, ſays, that the ſaid William, *precludi non*; becauſe he ſays, that he the ſaid John adminiſtered divers goods and chattels which were of the ſaid Thomas at the time of his death, as executor of his will, to wit, on, &c. at, &c. and this he prays may be enquired of by the country, &c. *Drawn by* MR. GRAHAM.

Replication, that he did adminiſter.

AND the ſaid Ann, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and ſays, *actio non*; becauſe ſhe ſays, that ſhe has fully adminiſtered all and ſingular the goods and chattels which were of the ſaid G. B. at the time of his death, and which have ever come to the hands of her the ſaid Ann to be adminiſtered, except the ſum of two pounds twelve ſhillings and ſixpence, of lawful, &c. and that ſhe the ſaid Ann hath not, nor at any time ſince, had any goods and chattels which were of the ſaid G. B. at the time of his death in her hands to be adminiſtered, except the aforeſaid ſum of two pounds twelve ſhillings and ſixpence; and this, &c. wherefore, &c. if, &c. N. GROSE.

Plea of *plene adminiſtravit, præter* 2l.

(a) Plea of *tarefs*, of money due on a judgment recovered by the defendant against the plaintiff as adminiſtrator.

RULE *at the ſuit of* WILSON, ADMINISTRATOR. } *ACTIO NON*; becauſe he ſays, that he the ſaid John heretofore, that is to ſay, in Eaſter term, in the third year of the reign of our lord the now king, impleaded the ſaid M. as adminiſtrator; and in the court of our lord the king, before Sir C. Pratt, knight, and his brethren, then his majeſty's juſtices of the bench, at Weſtminſter, in &c. in a plea of treſpaſs on the caſe, then and there declaring by A. B. his attorney, againſt the ſaid M. as adminiſtratrix as aforeſaid in that plea; that whereas, &c. (here recite the declaration, and proceed thus): and afterwards, to wit, in Trinity term, in the third year aforeſaid, the ſaid M. came into the ſaid court of our lord the king, of the bench, at, &c. by C. D. her attorney, and defended the wrong and injury, when, &c. and ſaid, &c. (here recite the plea, which in this caſe was a judgment outſtanding, and *plene adminiſtravit ultra, &c.*) and ſuch proceedings were thereupon had, that afterwards, to wit, in Michaelmas term, in the fourth year of the reign of, &c. before Sir C. P. &c. then his majeſty's juſtices, &c. the ſaid J. by the conſideration of the ſaid court recovered, &c. (ſet forth the judgment), whereof the ſaid M. as adminiſtratrix in form aforeſaid, has been convicted, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king, of the bench aforeſaid, at, &c. more fully appears, which ſaid judgment ſtill remains in its full force, ſtrength, and effect, not in the leaſt paid, ſatisfied, recovered or made void: And the ſaid John further ſays, that the monies recovered by the ſaid judgment, and now due and owing to the ſaid J. thereon, exceed the monies due and owing from the ſaid J. to the ſaid M. as adminiſtratrix as aforeſaid, and which the ſaid M. hath above complained againſt the ſaid J. to wit, at, &c.; and that the ſaid John is ready and willing, and hereby offers to ſet off to the ſaid M. as adminiſtratrix aforeſaid, out of the damages aforeſaid, ſo recovered in form aforeſaid, all ſuch damages as the ſaid G. in his lifetime, or the ſaid M. adminiſtratrix as aforeſaid, have or hath ſuſtained on occaſion of the not performing the ſaid promiſes and undertakings in the ſaid declaration mentioned, according to the form of the ſtatute in ſuch caſe made and provided; and this, &c. wherefore, &c.

J. MORGAN.

(a) See Set Off, ante.

Plea, by executrix, that the teſtator in his lifetime gave a bond to one A. B. which is ſtill in force, and that ſhe hath fully adminiſtered except 5l.

AND the ſaid Sarah by A. B. her attorney, comes and defends the wrong and injury, when, &c. and ſays, *actio non*; becauſe ſhe ſays, that the ſaid C. N. in his lifetime, to wit, on, &c. at, &c. by his certain writing obligatory, ſealed with his ſeal, and then and there made for a true and juſt debt, became held and firmly bound to one R. N. S. N. and one G. G. in the ſum of ſix hundred pounds of lawful, &c. to be paid to the ſaid R. N. S. N. and G. G. when he the ſaid C. N. ſhould be thereunto afterwards requeſted, which ſaid writing obligatory at the time of the death of the ſaid C. N. was, and ſtill is in full force and effect,

not cancelled, annulled, discharged, or satisfied; and the said defendant further saith, that she hath fully administered all and singular the goods and chattels which were of the said C. N. at the time of his death, which have come to her hands to be administered, except goods and chattels to the value of five pounds; and that she hath not, nor on the day of exhibiting the bill of the said plaintiff against her, nor ever since had any goods and chattels which were of the said C. N. at the time of his death in her hands to be administered, except goods and chattels to the value of five pounds, which is not sufficient to satisfy the said writing obligatory, and which is subject and liable to satisfy the same, and this, &c. wherefore, &c. if, &c.: And for further plea in this behalf, the said plaintiff by leave of the court, &c. according to the form of, &c. says, *actio non*; because she says, that she the said defendant hath fully administered all and singular the goods and chattels which were of the said C. N. at the time of his death, which have come to her hands to be administered, and that she hath not any goods and chattels which were of the said C. N. at the time of his death, nor had she any on the day of exhibiting the bill of the said plaintiff, nor at any time afterwards, and this, &c. wherefore, &c. if, &c. W. BALDWIN.

2d Plea. *Plene administravit.*

AND the said defendant, by A B his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the letters testamentary of the said J. S. in the said declaration mentioned, and they are read to him in these words, &c. &c.; which being read and heard, the said defendant saith, *actio non*; because he says, that the said diocese of Carlisle is, and at the time of the death of the said J. S. was within the province of York; and that the said J. S. at the time of his death, was an inhabitant of and commorant at the city of Carlisle in the county of Cumberland, within the diocese of the bishop of Carlisle: And the said defendant further says, that the said J. S. at the time of his death, and before, had divers goods, chattels, rights, and credits, which were in the several dioceses of the archbishop of York and the bishop of Carlisle, and within the said province of York, to wit, goods and chattels to the value of pounds and upwards, within the said diocese of the bishop of Carlisle, to wit, at the city of Carlisle aforesaid, and also other goods and chattels to the value of other pounds and upwards, within the diocese of the archbishop of York, to wit, at the castle of York in the county of York; by means whereof the probate of the said will of the said J. S. and the commission of the administration of the goods and chattels of the said J. S. did of right belong to the archbishop of York by the prerogative of the church of York, and not to the bishop of Carlisle or his vicar-general or official, or to any other person, save only the archbishop of York; and this, &c.: wherefore, &c. if, &c. J. YATES.

Plea of *bona notabilia* in an action on the case, at the suit of an executor.

Plea of *plene administravit præter*, three pounds in money.

AND the ſaid J. P. adminiſtrator as aforeſaid, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that he hath fully adminiſtered all the goods and chattels which were of the ſaid J. P. at the time of his death, which have ever come to the hands of the ſaid J. P. adminiſtrator as aforeſaid, to be adminiſtered, except the ſum of three pounds of lawful money of Great Britain now remaining in the hands of him the ſaid J. P. as aforeſaid unadminiſtered; and that he the ſaid J. P. adminiſtrator as aforeſaid, hath not, nor at the time of exhibiting the bill of the ſaid plaintiff, or at any time ſince, had any goods and chattels which were the goods and chattels of the ſaid S. J. P. deceaſed in his hands to be adminiſtered, except the aforeſaid ſum of three pounds, which he now brings into court here ready to be paid to the ſaid plaintiff for and in ſatisfaction of his damages, by reaſon of the non performing of the ſaid promiſes and undertakings in the ſaid declaration mentioned by the ſaid S. J. P. deceaſed; and this he the ſaid J. P. adminiſtrator as aforeſaid, is ready to verify. Wherefore he prays judgment if the ſaid plaintiff ought to have his aforeſaid action maintained againſt him, to recover any greater or further ſum of money than the aforeſaid ſum of three pounds, together with his coſts in this behalf ſuſtained. V. LAWES.

Replication (to a plea of *plene administravit*) that plaintiff, after the death of teſtator, ſued out a *latitat* againſt defendants, in order for them to put in common bail, that he might exhibit his bill, and that at the time of exhibiting defendants had divers goods, &c.

AND the ſaid Joſeph prays a day to impart to the ſaid plea, and it is granted him, &c.; and thereupon a day is given to the parties aforeſaid to come before our lord the king at Weſtminſter, next after eight days of Saint Hilary, that is to ſay, for the ſaid Joſeph to impart to the ſaid plea, and then to reply to the ſame, &c.; at which day, before our lord the king at Weſtminſter, came the parties aforeſaid, by their attornies aforeſaid: And the ſaid Joſeph ſays, that he, by reaſon of any thing by the ſaid H. and J. in their ſaid plea above alleged, *precludi non*; becauſe he ſays, that he the ſaid Joſeph, for the recovery of his damages by him ſuſtained on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned after the death of the ſaid A. C. to wit, on, &c. at, &c. ſued and proſecuted out of the court of our lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of Middleſex), a certain writ of our ſaid lord the king called *latitat*, againſt the ſaid H. and J. directed to the then ſheriff of G. by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould take the ſaid H. and J. by the names and deſcriptions of, &c. if they might be found in his bailiwick, and them ſafely keep, ſo that the ſaid ſheriff might have their bodies before our lord the king at Weſtminſter on, &c. next after, &c. then next following, to anſwer to the ſaid Joſeph in a plea of treſpaſs; and that the ſaid ſheriff ſhould then have there that writ, as by the ſaid writ may more fully and at large appear; which ſaid writ ſo ſued and proſecuted out of the ſaid court, was ſo ſued and proſecuted out of the ſaid court by the

the ſaid Joſeph againſt the ſaid H. and J. with an intent that the ſaid H. and J. might each be ſerved reſpectively, with a copy thereof, according to the form of the ſtatute in ſuch caſe made and provided, and be thereby compelled to file and put in common bail at the return thereof in the ſaid court of our ſaid lord the king, before the king himſelf, at the ſuit of the ſaid Joſeph; and that the ſaid Joſeph might, upon ſuch their filing and putting in ſuch their common bail, exhibit his bill againſt the ſaid H. and J. as adminiſtrator of all and ſingular the goods, &c. which were of the ſaid A. C. deceaſed at the time of his death, with the will of the ſaid A. C. annexed, for the recovery of his damages aforeſaid: And the ſaid Joſeph further ſays, that afterwards, to wit, on, &c. the ſaid H. was ſerved in due manner with a copy of the ſaid writ; and afterwards, to wit, on, &c. the ſaid J. was likewiſe ſerved with a copy of the ſaid writ according to the form of the ſtatute in ſuch caſe made and provided, to wit, at, &c. and then and there had notice of the ſaid ſuit of the ſaid Joſeph: And the ſaid Joſeph further ſays, that at the return of the ſaid writ, to wit, on, &c. next after, &c. therein mentioned, before our lord the king at Weſtminſter, came as well the ſaid Joſeph by his ſaid attorney, as the ſaid H. and J. by their ſaid attorney; and thereupon the ſaid Joſeph then and there, to wit, in and of Michaelmas term, in the twenty firſt year of, &c. exhibited his bill againſt the ſaid H. and J. in the ſaid court here in manner and form aforeſaid: And the ſaid Joſeph ſays, that the ſaid H. and J. at the time of ſuing out and proſecuting the ſaid writ of *latitat* in the ſaid court here, and afterwards, and after the ſaid H. and J. were ſerved with copies thereof, and had notice of the ſaid ſuit of the ſaid Joſeph as aforeſaid, had divers goods and effects which were of the ſaid A. C. at the time of his death, in their hands, to be adminiſtered to the value of the damages aforeſaid by the ſaid Joſeph above demanded, wherewith the ſaid H. and J. might and ought to have ſatisfied the ſaid Joſeph his damages aforeſaid, to wit, at, &c.; and this, &c.; wherefore he prays judgment and his damages, by reaſon of the premiſes to be adjudged to him, &c. F. BOWER.

Rejoinder to the laſt replication, that defendants, at the time of exhibiting the bill of plaintiff, had not any goods, &c.

And the ſaid H. and J. as to the ſaid plea of the ſaid Joſeph by him above pleaded by way of reply to the ſaid plea of the ſaid H. and J. by them firſt pleaded in bar, ſay, that notwithſtanding any thing by the ſaid Joſeph in his plea ſo pleaded by way of reply alledged, he the ſaid J. ought not to have his aforeſaid action thereof maintained againſt them, becauſe they ſay, that though true it is that the ſaid Joſeph did ſue and proſecute out of the ſaid court of, &c. now here, the ſaid writ of *latitat* in his ſaid plea ſo pleaded by way of reply mentioned, and that they the ſaid H. and J. were reſpectively ſerved with a copy thereof, and had notice of the ſaid ſuit of the ſaid Joſeph as the ſaid Joſeph hath above in his ſaid plea ſo pleaded by way of reply alledged: yet for rejoinder in this behalf, they the ſaid H. and J. ſay, that they the

said H. and J. had not, at the time of the said suing and prosecuting of the said writ of *latitat* out of the said court here and afterwards, and after the said H. and J. were served with copies thereof, and had notice of the said suit of the said Joseph as aforesaid, or at any or either of those times, goods and chattels which were of the said A. C. at the time of his death, in their hands, to be administered, wherewith they might or could have satisfied the said Joseph his damages aforesaid, or any part thereof, in manner and form as the said Joseph hath above in this said plea by him above pleaded by way of reply alledged; and of this they put themselves upon the country, &c. V. LAWES.

Plea to an action at the suit of administrator *durante minoritate* of an infant, that they are not executors, and administration was obtained by fraud.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said letters of administration here in court, and in the said declaration mentioned; and they are read to him in these words, to wit: Thomas, by Divine Providence, Archbishop of Canterbury, primate of all England and metropolitan, to our well beloved in Christ Don Pedro de Bellendo, of, &c. merchant, greeting: Whereas it has been alledged, before the right honourable Sir J. L. knight, doctor of laws, master-keeper or commissary of our prerogative court of Canterbury, lawfully constituted on the part and behalf of you the said plaintiff, that Don Joseph de L. late of the city of P. in South America, deceased, did, whilst living, and of sound mind, memory, and understanding, duly make and execute his last will and testament in writing, and did thereof nominate and appoint Donna L. de E. his wife, curatrix or guardian to A. de E. to J. de E. and M. de E. his natural and lawful children, during her widowhood only; and in case the said Donna L. de E. should celebrate a second marriage, then the said deceased, in and by his will, did declare his three children aforesaid his universal heirs to all his effects, and from thenceforth did substitute and appoint Donna M. C. widow, their grandmother, to be their tutoress and guardian, and executrix of his said will, and afterwards departed this life; having, whilst living, and at the time of his death, goods, chattels, and credits, in divers dioceses and jurisdictions, sufficient to found the jurisdiction of our said prerogative court of Canterbury, leaving behind him the said Donna L. de E. his widow and relict, and also the said A. de E. J. de E. and M. de E. his natural and lawful children, who are now in their respective minorities: And whereas it was further alledged, that the said Donna L. de E. has since intermarried with Don J. M. B: And whereas it was moreover alledged, that the said will of the said deceased was duly proved, deposited, and registered in the proper court of Panama aforesaid, but hath since, to wit, in the year of Our Lord 1750, been destroyed by the conflagration that happened at Panama aforesaid in the month of March in the said year, together with all the archives of the place; and that by reason of the second marriage of the said Donna L. de E. all her right to the

guardianſhip of the ſaid minors, her children, ceaſed and expired; and that the ſaid Donna L. M. E. widow, was, in conformity and purſuance of the directions of the ſaid Don de E. father of the ſaid minor, by his aforeſaid will, and by virtue of a decree of the royal ordinance and tribunal of the governor of P. aforeſaid, conſtituted and appointed guardian and curatrix of the ſaid minors her grandchildren: And whereas it was further alledged, that all perſons ſo conſtituted guardians and curators to the minors, by the royal ordinance and tribunal of the governor of P. aforeſaid, have, by themſelves or by their attornies, legally conſtituted in their ſtead full right to aſk and demand, recover and receive of and from all perſons whom it ſhall and may concern, all the eſtate, credits, and effects, belonging or in any wiſe appertaining to the minors to whom they are ſo appointed guardians and curators; and that the ſaid plaintiff is the lawful attorney of the ſaid Donna L. M. C. widow, the guardian of the ſaid minors, who now reſide in P. aforeſaid, eſpecially nominated and appointed by a letter or power of attorney in the Spaniſh language, duly authenticated as by the ſaid letter or power of attorney, together with a truthful and authentic tranſlation thereof ſhewn to our ſaid commiſſary, which ſaid authentic tranſlation is now remaining in the [illegible] of our ſaid prerogative court of Canterbury, and the [illegible] of D. J. M. C. C. D. A. G. P. touching the [illegible] premiſes before alledged, alſo remaining in the ſaid [illegible] of our ſaid court, more fully appears: And whereas our ſaid commiſſary, having duly conſidered the premiſes, did, at the [illegible]ion of the proctor of the ſaid plaintiff, decree letters of adminiſtration of all and ſingular the goods, chattels, and credits of the ſaid Don J. de E. deceaſed, ſo far as may concern his effects lying and being in England, but no further or otherwiſe, to be committed and granted to the ſaid plaintiff, as the lawful attorney of the ſaid Donna L. M. C. the tutoreſs and guardian ſubſtituted and appointed in and by the aforeſaid will of the ſaid J. de E. deceaſed, and alſo by virtue of a decree of the royal ordinance and tribunal of the governor of P. aforeſaid to A. de E. &c. minors, the natural and lawful children of the ſaid Don J. de E. deceaſed, and as ſuch ſubſtituted univerſal heirs, in and by the ſaid will, to all the effects of their ſaid late father, until an authentic copy of the ſaid will ſhall be produced and exhibited unto the regiſter of our prerogative court of Canterbury, for the uſe and benefit of the ſaid minors, and until ſuch time as one of them ſhall attain the age of twenty one years, juſtice ſo requiring: We, being deſirous that the ſaid goods, chattels, and credits, may be well and faithfully adminiſtered, applied, and diſpoſed of according to law, do therefore by theſe preſents grant full power and authority to you the ſaid plaintiff, in whoſe fidelity we confide, to adminiſter and lawfully diſpoſe of the goods and chattels of the ſaid Don J. de E. as far as may concern his effects lying and being in England, but no farther, or otherwiſe to aſk, demand, recover, and receive whatſoever debts and credits, which whilſt living,

ing, and at the time of his death, did any wife belong to his eſtate, and to pay whatſoever debts the ſaid deceaſed, at the time of his death, did owe, ſo far as ſuch goods, chattels, and credits limited as afor ſaid will thereto extend, and the law requires, you having be n already ſworn, well and faithfully to adminiſter the ſame, and to make a true and perfect inventory of all and ſingular the goods, chattels, and credits of the deceaſed, ſo far as may concern his effects lying and being in England aforeſaid, and to exhibit the ſame into the regiſtry of our prerogative court of Canterbury, on or before the laſt day of June next enſuing, and alſo to render a juſt and true account thereof on or before the laſt day of September, which ſhall be in the year of Our Lord 1756; and we do, by virtue of theſe preſents, ordain, depute, and conſtitute you the ſaid plaintiff adminiſtrator of all and ſingular the goods, chattels, and credits, of the ſaid Don J. de E. deceaſed, ſo far as may concern his effects lying and being in England, but no farther or otherwiſe, until an authentic copy of the ſaid will ſhall be produced and exhibited into the regiſtry of our ſaid prerogative court of Canterbury for the uſe and benefit of the ſaid minors, and until ſuch time as one of them ſhall attain the age of twenty-one years. Given at London the ſixth day of December A. D. 1768, and in the firſt year of our tranſlation; which being read and heard, the ſaid Alexander ſays, that he did not undertake and promiſe in manner and form as the ſaid plaintiff hath above thereof complained againſt him; and of this he puts himſelf upon the country, and the ſaid plaintiff doth the like: and for further plea, by leave, &c. *actio non*; becauſe he ſays, that the ſaid letters of adminiſtration were fraudulently had and deceitfully obtained after the ſaid A. de E. one of the children of the ſaid J. de E. had attained the age of twenty-one years, to wit, at London aforeſaid, in the parish and ward aforeſaid; without this, that the ſaid A. de E. at the time of the granting of the letters of adminiſtration aforeſaid, was within the age of twenty-one years, as by the ſaid declaration is above ſuppoſed, whereby the ſaid letters of adminiſtration brought here into court are void and of no effect in law; and this, &c.; wherefore, &c. if, &c.: and for further plea in this behalf the ſaid Alexander, by leave, &c. *actio non*, becauſe he ſays, that the ſaid A. de E. at the time of exhibiting of the ſaid bill of the ſaid plaintiff, was of the age of twenty-one years and upwards, and not within the age of twenty-one years, as the ſaid plaintiff hath in his ſaid declaration above alledged; and of this he the ſaid defendant puts himſelf upon the country; and the ſaid plaintiff doth the like, &c.

Replication, that adminiſtration was fairly obtained, and that the infants, at the time of the granting letters of adminiſtration, were within age.

And the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by him ſecondly above pleaded in bar, ſays, &c. *precludi non*; becauſe, proceeding that the ſaid plea is inſufficient in law, and that the letters of adminiſtration aforeſaid were fairly and duly obtained during the minority of the ſaid ſeveral children of the above-named Don J. de E. deceaſed; for replication in this behalf the ſaid plaintiff ſays, that the ſaid A. de E. at the time of the

the granting the letters of adminiſtration aforeſaid, was within the age of twenty-one years; and this the ſaid plaintiff prays may be enquired of by the country: and the ſaid defendant doth the like, &c. J YATES.

AND the ſaid Thomas and Ann, by A. B. their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid R. C. in his lifetime, did not undertake and promiſe in manner and form as the ſaid Joſeph and Richard have above thereof complained againſt them; and of this they put themſelves upon the country, &c. And for further plea in this behalf the ſaid Thomas and Ann Maria, by leave of the court here to them for this purpoſe firſt granted, according to the form of, &c. ſay, &c. *actio non*; becauſe they ſay, that the ſaid Ann Maria hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid R. C. at the time of his death in her hands to be adminiſtered, or had ſhe any on the day of exhibiting the bill of the ſaid Joſeph and Richard, not at any time afterwards; and this, &c; wherefore, &c. if, &c. And for further plea in this behalf the ſaid Thomas and Ann, by leave, &c. according, &c. ſay, (*actio non*); becauſe they ſay that the ſaid R. C. in his lifetime was indebted to the ſaid Ann before her marriage with the ſaid Thomas in the ſum of two hundred and fifty pounds of lawful, &c. for ſo much money by the ſaid Ann before that time lent and advanced to the ſaid R. C. and for money by the ſaid Ann before that time paid, laid out, and expended to and for the uſe of the ſaid R. C. at his ſpecial inſtance and requeſt, and which ſaid ſum of two hundred and fifty pounds, at the time of the death of the ſaid R. C. remained due and owing and is yet due and owing to the ſaid Thomas and Ann: And the ſaid Thomas and Ann further ſay, that after the death of the ſaid R. C. divers goods and chattels which belonged to the ſaid R. C. of the value of twenty pounds, came to the hands of the ſaid Ann, to wit, at, &c. which ſaid goods and chattels the ſaid Thomas and Ann have retained in their hands in part ſatisfaction of the ſaid two hundred and fifty pounds, and that the ſaid Ann, on the day of exhibiting the bill of the ſaid J. and R. or before, or ever ſince, had not any other goods or chattels which belonged to the ſaid R. C. at the time of his death, come to her hands to be adminiſtered, except the ſaid goods and chattels to the value of the ſaid twenty pounds, which are not ſufficient to ſatisfy the ſame, and this, &c.; wherefore, &c. W. BALDWIN.

Plea by an executrix *feme covert*; 1ſt, *non-aſſumpſit*; 2d, *plene adminiſt.* 3d, that teſtator was indebted to defendant before her marriage, and that the goods which have come to her hands to be adminiſtered ſhe retains to pay herſelf. 3d Plea.

SHAW, EXECUTOR, &c. *at the ſuit of* RAWLINSON AND ANOTHER. } AND the ſaid John Shaw, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid G. W. in his lifetime, and the ſaid John Shaw, ſince his deceaſe, did not, nor did either of them undertake and promiſe in manner and form as the ſaid

Plea, 1ſt, general iſſue, that neither defendant's, teſtator, nor he promiſed.

A. R.

2d, As to all the Counts of the declaration, except the last, that testator appointed one of the plaintiffs and two others joint executors with defendant, and concludes in bar.

A. R. and J. R. hath above thereof complained against him; and of this he puts himself upon the country, &c. And for further plea in this behalf, as to all the Counts except the last, he the said John Shaw, by leave of the court here to him for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said A. R. and J. R. (*actio non*); because he says that the said G. W. the testator, in his life-time, to wit, on, &c. to wit, at, &c. duly made and published his last will and testament in writing, and thereof constituted and appointed the said John Shaw and the said J. R. one T. B. T. B. and J. M. joint executors, and soon afterwards died, without altering or revoking his said will; and this, &c. wherefore, &c. if, &c. as to the said several promises and undertakings in the said declaration mentioned, except the last. And for further plea as to the said last Count of the said declaration, he the said John Shaw, by like leave of, &c. according to, &c. says (*actio non*); because he says, that the said promise and undertaking in the said last Count mentioned (if any such was made), was made by the said John Shaw, together with the said J. R. T. B. T. B. and J. M. jointly, and not by the said J. S. separately from and without the said J. R. T. B. T. B. and J. M. to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

3d, As to the last Count, that if any promise was made, it was made jointly.

V. LAWES.

Replication to the 1st plea, *dudita*.

To the 2d plea, that J. R. never proved the will, nor administered.

And as to the said plea of the said John Shaw by him first above pleaded in bar, and whereof he hath put himself upon the country, the said A. R. and J. R. doth the like. And the said A. R. and J. R. as to the said plea of the said J. S. by him secondly above pleaded in bar, say, that they the said A. R. and J. R. by reason of any thing by the said J. S. in that plea above alledged ought not to be barred from having or maintaining their aforesaid action against him; because, protesting that the same plea of the said J. S. in form aforesaid pleaded and the matters therein contained, are not sufficient in law to bar them the said A. R. and J. R. from having and maintaining their said action thereof against him; nevertheless, for a replication in this behalf the said A. R. and J. R. say, that the said J. S. never proved the said last will and testament of the said G. W. nor took upon himself the burthen of the execution thereof, nor in any manner whatsoever accepted of the said supposed appointment of him the said J. S. to be an executor of the said will, nor ever administered any goods and chattels which were of the said G. W. deceased, at the time of his death, as executor of the last will and testament of the said G. W.; and this, &c.; wherefore, &c. and their damages by reason of the not performing the said several promises and undertakings in the said declaration mentioned to be adjudged to them, &c. And the said A. R. and J. R. as to the said plea of the said J. S. by him lastly above pleaded in bar as to the said last Count of the said Declaration, say, that they, by reason of any thing in the same plea above alledged, ought not to be barred from having and maintaining their said

To the 3d plea, taking issue on it.

The granting of administration, were within age.

said action thereof against the said J. S.; because they say that the said promise and undertaking in the said last Count mentioned, was not made by the said J. S. together with the said J. R. T. B. T. B. and J. M. in manner and form as by the same plea is above alledged; and this the said A. R. and J. R. pray may be enquired of by the country; and the said J. S. doth the like.

G. S. Holroyd.

Rejoinder, demurring generally to replication to 2d plea, and *similiter* to the replication to the 3d plea.

And as to the said plea of the said A. R. and J. R. by them above in reply pleaded to the said plea of the said J. S. by him secondly above pleaded in bar, he the said J. S. says, that the said plea so in reply pleaded, and the matters therein contained, are not sufficient in law for the said A. R. and J. R. to have or maintain their said action against the said J. S. to which said plea so in reply pleaded in manner and form as the same is above made and pleaded, he the said J. S. hath no need, nor is he bound by the law of the land to answer; and this, &c.; wherefore for want of a sufficient replication in this behalf the said J. S. prays judgment, and that the said A. R. and J. R. may be barred from having and maintaining their said action thereof against him, &c.

V. Lawes.

Edmonson, Administrator, *at the suit of* Harrison.

Plea, 1st, Testator *non-assumpsit* and *similiter*; 2d, a bond-debt outstanding and *plene administravit præter* 5l. which are liable to that debt, and not sufficient to satisfy it.

AND the said Alfred, the now defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said A. E. deceased, in his lifetime, did not undertake and promise in manner and form as the said Daniel hath above thereof complained against him; and of this he puts himself upon the country; and the said plaintiff doth the like, &c.: And for further plea in this behalf, the said defendant by leave of, &c. according to, &c. says (*actio non*); because he says that the said A. E. now deceased, in his lifetime, to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, and as his deed delivered for a just and true debt, became held and firmly bound to one R. L. and one J. D. in the sum of four hundred pounds, to be paid to the said R. L. and J. D. when the said A. E. now deceased, should be thereunto afterwards requested, which said writing-obligatory, at the time of the death of the said A. E. now deceased, was and still remains in full force, unpaid and uncancelled: And the said Alfred, the now defendant, further says, he has fully administered all and singular the goods and chattels which were of the said A. E. now deceased, at the time of his death in his hands to be administered, except goods and chattels to the value of five pounds, to wit, at, &c.; and that he hath not, nor at the time of exhibiting the bill aforesaid of the said Daniel, nor at any time since, had any goods and chattels which were of the said A. E. now deceased, at the time of his death in his hands to be administered, except the said goods and chattels to the value of five pounds, and which are

not sufficient to satisfy the debt aforesaid, and which are subject and liable to the satisfaction thereof, and this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf, the said A. E. the now defendant, by like leave of, &c. according to, &c. says (*actio non*); because he says that he has fully administered all and singular the goods and chattels which were of the said A. E. now deceased, at the time of his death, which have ever come to or been in his hands to be administered, to wit, at, &c.; and that the said Alfred, the now defendant, hath not, nor had he at the time of exhibiting the bill of the said Daniel, nor hath he at any time since any goods and chattels which were of the said A. E. now deceased, at the time of his death, in the hands of him the said Alfred, the now defendant, to be administered; and this, &c.; wherefore, &c. if, &c.

3d Plea, *plene administravit* generally.

W. Baldwin.

And the said Daniel, as to the said plea of the said Alfred, the now defendant, by him secondly above pleaded, saith that he the said Daniel cannot deny the several matters therein mentioned, but admits the same to be true, prays judgment and his damages by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned to be adjudged to him, to be levied of the goods and chattels which were of the said A. E. deceased, at the time of his death, and which, after satisfying the debt in the said second plea mentioned, shall hereafter come to the hands of the said Alfred, the now defendant, to be administered; therefore it is considered that the said Daniel do recover against the said Alfred, the now defendant his damages to be levied in form aforesaid; but because it is convenient and necessary that there be but one taxation of damages in this suit, and because it is uncertain whether or not the said Alfred, the now defendant, will be convicted upon the said pleas by him firstly and lastly above pleaded, therefore let all further proceedings upon the said plea of the said Alfred, the now defendant, by him secondly above pleaded, be stayed until the determination of the said other pleas by him firstly and lastly above pleaded. And as to the said plea of the said A. E. the now defendant, by him lastly above pleaded, the said Daniel saith, that he, by reason of any thing by the said Alfred, the now defendant, in that plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says that the said Alfred, the now defendant, hath and at the time of the exhibiting the said bill of the said Daniel, had divers goods and chattels which were of the said Alfred, deceased, at the time of his death, in the hands of him the said Alfred, the now defendant, to be administered, to wit, at, &c.; and this he the said Daniel prays may be enquired of by the country, and the said Alfred, the now defendant, doth the like; therefore, as well to try this issue as the said other issue above joined between the said parties, let a jury come before our lord the king at Westminster, on, &c. by whom, &c. who neither

Replication to the 2d plea, taking judgment of assets in *futuro*, with stay of proceedings till trial of the issues.

Unica taxatio.

To 3d plea of *plene administravit*, taking issue on it.

neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the ſaid parties there, &c.

GREEN *et e contra* WARREN, ADMINISTRATRIX, &c.

AND the ſaid Robert, by James Garth his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he did not undertake and promiſe in manner and form as the ſaid Margaret, adminiſtratrix as aforeſaid, hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c.; and the ſaid Margaret, adminiſtratrix as aforeſaid, doth the like, &c.: And for further plea in this behalf, the ſaid Robert, by leave, &c. (*as to two*); becauſe he ſays that he the ſaid Robert, ſince the fourteenth day of May, which was in the year of Our Lord 1769, to wit, on the ſeventeenth day of January, in the year of Our Lord 1778, to wit, at Manchester in the ſaid county of Lancaſter, became a bankrupt within the ſeveral ſtatutes made againſt bankrupts: And the ſaid Robert, according to the form of the ſtatute in ſuch caſe made and provided, further pleads and ſays, that the ſeveral cauſes of action, in the declaration aforeſaid above ſpecified reſpectively accrued before the ſaid time when he the ſaid Robert ſo as aforeſaid became a bankrupt, and of this he the ſaid Robert puts himſelf upon the country, &c.; and the ſaid Margaret, adminiſtratrix aforeſaid, doth the like, &c.: And for further plea in this behalf, the ſaid Robert, by leave of the court here to him for this purpoſe firſt had and obtained according to the form of the ſtatute in ſuch caſe made and provided, ſays, (*as to two*); becauſe he ſays that he the ſaid Robert did not at any time within ſix years before the exhibiting the bill of the ſaid Margaret, adminiſtratrix as aforeſaid, undertake and promiſe in manner and form as the ſaid Margaret hath thereof complained againſt him; and this he the ſaid Robert is ready to verify; wherefore he prays judgment if the ſaid Margaret, adminiſtratrix as aforeſaid, ought to have or maintain her ſaid aforeſaid action thereof againſt him, &c.: And for further plea in this behalf, by like leave, &c. (*as to two*); becauſe he ſays that the ſaid Samuel, in his lifetime, and at the time of his death, was indebted to him the ſaid Robert in more money than is owing from him the ſaid Robert to the ſaid Margaret, adminiſtratrix as aforeſaid, and by virtue of the ſeveral promiſes and undertakings in the firſt, ſecond, third, and fourth Counts of the ſaid declaration mentioned, that is to ſay, in the ſum of five hundred pounds of, &c. for, &c. and which ſaid ſeveral ſums of money laſt-mentioned, ſo due and owing from the ſaid Samuel, in his lifetime, to the ſaid plaintiff, are ſtill due and owing and unpaid to the ſaid Robert; and alſo that the ſaid Margaret, adminiſtratrix as aforeſaid, before and at the time of exhibiting the bill of the ſaid Margaret, was and ſtill is indebted to the ſaid Robert in more money than is due and owing from the ſaid Robert to the ſaid Margaret, adminiſtratrix as aforeſaid, by virtue of

Plea to action of *aſſumpſit*, by an adminiſtratrix; 1ſt, *non-aſſumpſit* and iſſue; 2d, *bankruptcy* in defendant after the cauſes of action accrued, and iſſue.

3d Plea, *non-aſſumpſit infra ſex annos.*

4th Plea, to 1ſt, 2d, 3d, and 4th Counts *ſet off*, money due from teſtator; and to 5th, 6th, 7th, and 8th Counts of money due to defendant as adminiſtratrix.

of the promiſes and undertakings in the fifth, ſixth, ſeventh, and laſt Counts of the ſaid declaration mentioned, that is to ſay, in the ſum of five hundred pounds of like lawful money, for, &c. which ſaid ſeveral and reſpective ſums of money, or ſo much thereof as ſhall be neceſſary in this behalf, the ſaid Robert hath been ready and willing to ſet off and now ſets off againſt any demands due and owing to the ſaid Margaret, as adminiſtratrix as aforeſaid, by virtue of the ſeveral promiſes and undertakings in the ſaid ſeveral Counts of the ſaid declaration mentioned, according to the form of the ſtatute in ſuch caſe made and provided; and this he the ſaid Robert is ready to verify: wherefore he prays judgment if the ſaid Margaret, adminiſtratrix as aforeſaid, ought to have or maintain her aforeſaid action thereof againſt him, &c.

WILLIAM MANLEY.

Replication to 3d plea, that defendant did promiſe within ſix years, and iſſue.

WARREN, ADMINISTRATRIX, *againſt* GRIFFIN.

And the ſaid Margaret, as to the ſaid plea of the ſaid plea of the ſaid Robert by him thirdly above pleaded in bar, ſays, that by reaſon of any thing by the ſaid Robert in that plea alledged, ſhe the ſaid Margaret, adminiſtratrix as aforeſaid, ought not to be barred from having or maintaining her aforeſaid action thereof againſt him the ſaid Robert; becauſe ſhe ſays that he the ſaid Robert did, within ſix years next before the day of exhibiting the bill of the ſaid Margaret, adminiſtratrix as aforeſaid, undertake and promiſe in manner and form as the ſaid Margaret, adminiſtratrix as aforeſaid, hath above thereof complained againſt him the ſaid Robert, to wit, at Manchester aforeſaid, in the county of Lancaſter; and this ſhe the ſaid Margaret prays may be enquired of by the country; and the ſaid Robert doth the like, &c.: And as to the ſaid plea of the ſaid Robert by him laſtly above pleaded in bar ſhe the ſaid Margaret, adminiſtratrix as aforeſaid, ſays, that ſhe, by reaſon of any thing by the ſaid Robert in that plea alledged, ought not to be barred from having and maintaining her aforeſaid action thereof againſt him the ſaid Robert; becauſe he ſays that neither the ſaid Samuel, in his lifetime, nor ſhe the ſaid Margaret, after his death, as ſuch adminiſtratrix as aforeſaid, were indebted to the ſaid Robert in manner and form as the ſaid Robert hath above in his ſaid laſt-mentioned plea alledged; and this ſhe prays may be enquired of by the country; and the ſaid Robert doth the like, &c.

Replication to 4th plea, *nil debet* and iſſue.

THOMAS BARROW.

Replication of Michaelmas Term to plea of *plene adminiſtravit* of Hilary, proteſting that *after the laſt continuance of plea, aſſets came to defendant's hands, with opinion as to the propriety of ſuch replication.*

AND the ſaid Chriſtopher, as to the ſaid plea of the ſaid Ann by her laſtly above pleaded, ſays, that the ſaid Chriſtopher ought not by reaſon of any thing therein contained to be precluded from having and maintaining his aforeſaid action thereof againſt her, becauſe he ſays that this action was laſt continued from the * day of

* The day of putting in the plea, if in term; if not, the laſt day of Hilary.

in

in Hilary term last past, on which day the said last-mentioned plea was pleaded, and that though true it is that the said Ann, at the last time of pleading the said last-mentioned plea, had not any goods or chattels which were of the said Thomas Jones deceased, at the time of his death, to be administered, for replication to the said plea of the said Caney, saith, that after the said day of , from which day the said action was last continued as aforesaid, and before the said day, to wit, on the day of , to wit, at London aforesaid, in the parish and ward aforesaid, divers goods and chattels which were of the said Thomas Jones deceased, at the time of his death, to the value of , to wit, of the value of pounds, came to the hands of the said Ann, and the said Ann hath not yet administered all and singular the goods and chattels of the said Thomas Jones deceased, at the time of his death, to be administered, but hath wholly neglected and refused so to do, and still doth neglect and refuse so to do, contrary to the duty of her office, and contrary to the form of the statute in such case made and provided; and this he is ready to verify: wherefore he prays judgment, and his debt aforesaid, together with his damages by him sustained by reason of the detainer thereof, to be levied, &c.

It they are insufficient to pay.

THOMAS BARROW.

[illegible]

THOMAS [illegible]

AND the said Jane, by John Lucas her attorney, comes and defends the wrong and injury, when, &c. and says, that the said

Plea, 1st, *revocavit* by testator; 2d, set off, &c. and on COVENANTS to perform AWARD, &c.

Thomas Howell, deceaſed, did not undertake or promiſe in manner and form as the ſaid Richard hath above thereof complained againſt her, and of this ſhe puts herſelf upon the country, &c. and for further plea in this behalf, ſhe the ſaid Jane, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Richard ought not to have or maintain his aforeſaid action thereof againſt her; becauſe ſhe ſays, that the ſaid Richard in the lifetime and at the time of the death of the ſaid Thomas Howell, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, was indebted to the ſaid Thomas Howell in a much larger ſum of money than the money ſo due and owing from the ſaid Jane, as ſuch adminiſtratrix as aforeſaid to the ſaid Richard, and whereof the ſaid Richard hath above thereof complained againſt her the ſaid Jane, to wit, in the ſum of ſix hundred pounds of lawful money of Great Britain, for money by the ſaid Richard before that time had and received to and for the uſe of the ſaid Thomas Howell, and for other money by the ſaid Thomas Howell before that time lent and advanced to the ſaid Richard, and at his like ſpecial inſtance and requeſt; and for other money by the ſaid Thomas Howell before that time lent and advanced to the ſaid Richard at his like ſpecial inſtance and requeſt, and for other money before that time due and owing from the ſaid Richard to the ſaid Thomas Howell, upon an account ſtated between them the ſaid Richard and the ſaid Thomas Howell, which ſaid ſum of money ſo due and owing from the ſaid Richard to the ſaid Thomas Howell as aforeſaid, at the time of the exhibiting of the bill of the ſaid Richard againſt the ſaid Jane, remained and was and from thence hitherto hath been, and ſtill is due and owing from the ſaid Robert to the ſaid Jane, as ſuch adminiſtratrix as aforeſaid, and which ſhe the ſaid Jane, as ſuch adminiſtratrix aforeſaid, is ready and willing, and here offers to ſet off and allow to the ſaid Richard the ſaid money ſo from him due and owing as aforeſaid, or ſo much thereof as the damages ſuſtained by the ſaid Richard on occaſion of the not performing of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned amount to, according to the form of the ſtatute in ſuch caſe made and provided; and this ſhe the ſaid Jane is ready to verify: wherefore ſhe prays judgment if the ſaid Richard ought to have or maintain his aforeſaid action thereof againſt her, &c.:

Plene adminiſtravit.

And for further plea in this behalf, ſhe the ſaid Jane, by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Richard ought not to have or maintain his aforeſaid action thereof againſt her, becauſe ſhe ſays, that ſhe the ſaid Jane hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid Thomas Howell, deceaſed, at the time of his death, and which have ever come to her hands to be adminiſtered, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and that ſhe the ſaid Jane hath not, nor on the day of exhibiting the bill of the ſaid Richard, or at any time afterwards, had

had ſhe any goods and chattels which were of the ſaid Thomas Howell, deceaſed, at the time of his death in the hands of her the ſaid Jane to be adminiſtered, wherewith ſhe could or might have paid or ſatisfied the ſaid Richard his damages on occaſion of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; and this ſhe the ſaid Jane is ready to verify: wherefore ſhe prays judgment if the ſaid Richard ought to have or maintain his aforeſaid action thereof againſt her, &c. And for further plea in this behalf, ſhe the ſaid Jane, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Richard ought not to have or maintain his aforeſaid action thereof againſt her, becauſe ſhe ſays, that one Thomas Walter, ſince the death of the ſaid Thomas Howell, deceaſed, to wit, on the ſixth day of March, in the year of Our Lord 1790, in the court of great ſeſſions, held at Cardiff, in and for the county of Glamorgan, before George Hardinge, and Abel Moyſey, eſquires, judices of the great ſeſſion for the ſaid county, by the conſideration and judgment of that court recovered againſt the ſaid Jane, as executrix of the laſt will and teſtament of the ſaid Thomas Howell, deceaſed, as well a certain debt of two hundred and ten pounds ten ſhillings, as alſo ninety ſhillings, which in and by the ſaid court were then adjudged to the ſaid Thomas Walter for his damages which he had ſuſtained, as well on occaſion of the detaining of that debt, as for his coſts and charges, by him about his ſuit in that behalf expended, to be levied of the goods and chattels which were of the ſaid Thomas Howell deceaſed, if ſhe the ſaid Jane had ſo much thereof in her hands to be adminiſtered, and if ſhe the ſaid Jane had not ſo much thereof in her hands to be adminiſtered, then the ſaid ninety ſhillings, the damages aforeſaid, to be levied of the proper goods and chattels of the ſaid Jane, which of the ſaid Jane was convicted, as by the record and proceedings remaining in the ſaid court of great ſeſſions at Cardiff aforeſaid, in the county of Glamorgan, more fully and at large appears, which ſaid judgment ſo had and obtained as aforeſaid, was ſo had and obtained for a true and juſt debt, then and truly due and owing from the ſaid Thomas Howell in his time at the time of his death unto the ſaid Thomas Walter, and at the time of the recovery of the ſaid judgment in arrear and unpaid; and which ſaid judgment ſtill remains in its full force, ſtrength, and effect, except as to the ſum of one hundred pounds, parcel of the ſaid debt and damages ſo thereby recovered: And the ſaid Jane further ſays, that one Hopkin Llewelyn, heretofore and ſince the death of the ſaid Thomas Howell deceaſed, to wit, on the ſaid twenty-ſixth day of March, in the year of Our Lord 1790, in the court of our lord the king of great ſeſſions held at Cardiff, in and for the county of Glamorgan, before the ſaid George Hardinge and Abel Moyſey, eſquires, judices of the great ſeſſions of the ſaid county, by the conſideration and judgment of that court recovered againſt the ſaid Jane, as executrix of the laſt

Judgments recovered.

will and teſtament of the ſaid Thomas Howell deceaſed, as well a certain debt of twenty-three pounds eight ſhillings and ſixpence, as alſo ninety ſhillings, which in and by the ſaid court were then and there adjudged to the ſaid Hopkin Llewellyn for his damages which he had ſuſtained, as well on occaſion of the detaining of that debt, as for his coſt and charges by him about his ſuit in that behalf expended, to be levied of the goods and chattels which were of the ſaid Thomas Howell deceaſed, if ſhe the ſaid Jane had ſo much thereof in her hands to be adminiſtered; and if ſhe had not ſo much thereof in her hands to be adminiſtered, the ſaid ninety ſhillings to be levied of the proper goods and chattels of the ſaid Jane, whereof the ſaid Jane was convicted, as by the record and proceedings thereof remaining in the ſaid court of great ſeſſions at Cardiff aforeſaid, in the ſaid county of Glamorgan, more fully and at large appears; which ſaid laſt judgment ſo had and obtained as aforeſaid, was ſo had and obtained for a juſt and true debt, really and truly due and owing from the ſaid Thomas Howell in his lifetime and at the time of his death to the ſaid Hopkin Llewellyn, and at the time of the recovery of the ſaid laſt-mentioned judgment is clear and unpaid, which ſaid laſt-mentioned judgment ſtill remains in its full force ſtrength, and effect, not reverſed or annulled paid off, or ſatisfied: And the ſaid Jane, as adminiſtratrix, in fact ſaith ſays, that by a certain indenture, of four parts, made the ſeventeenth day of October, in the year of Our Lord 1760, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, between one Herbert Lloyd and one Thomas Williams, by their ſeveral names and additions therein mentioned, of the firſt part; the ſaid Thomas Howell, by his name and additions therein mentioned, of the ſecond part; one Walter Rice Howell, ſince deceaſed, by his name and addition therein alſo mentioned, of the fourth part; one part of which ſaid indenture, ſealed with the ſeal of the ſaid Thomas Howell, is now in the poſſeſſion of Walter Powell, executor of the laſt will and teſtament of the ſaid W. R. H.; ſo that ſhe the ſaid Jane cannot bring the ſame into court here, the ſaid Thomas Howell, for certain good and valid conſiderations therein mentioned, for himſelf, his heirs, executors, and adminiſtrators, and for each and every of them, did covenant, promiſe, grant, and agree to, and with the ſaid Walter Rice Howell, and his aſſigns, and to and with every of them, in manner and form following, that is to ſay, that he the ſaid Thomas Howell, his heirs, executors, adminiſtrators, and aſſigns, ſhould and would yearly and every year, during the term of the natural life of the ſaid Walter Rice Howell, if the ſaid Thomas Howell ſhould ſo long live, on the twenty-ninth day of September yearly, well and truly pay, or cauſe to be paid unto him the ſaid Walter Rice Howell, or his aſſigns, the clear yearly annuity or ſum of twenty-ſeven pounds fifteen ſhillings, clear of all deductions, payments, or taxes whatſoever, the firſt payment thereof to commence and be made on the twenty-ninth day of September next enſuing the day of the date of the ſaid indenture:

And

And the ſaid Jane further ſays, that after reciting amongſt other things in the ſaid indenture, that whereas one Mary Evans, in the ſaid indenture mentioned, in and by her laſt will and teſtament in writing, bearing date on or about the fourth day of April, in the year of Our Lord 1781, amongſt other things, did give and bequeath unto the ſaid Walter Rice Howell, and one Thomas Lewis, clerk, ſince deceaſed, their executors and adminiſtrators, the ſum of four hundred pounds, which ſhe directed to be paid to them within one year after her deceaſe, by her executor hereafter named, in truſt, that they the ſaid Walter Rice Howell, and Thomas Lewis, or the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor ſhould lay out the ſame in real and other good ſecurity, until Janetta Ilt da Howell, and Maria Elizabeth Howell, daughters of the ſaid Thomas Howell, by her niece Jane Howell, or one of them ſhould attain her age of twenty-one years, or be married, and when the ſaid Janetta Ilt da Howell ſhould attain her age of twenty one years, or be married, ſhould pay the ſum of three hundred pounds, part of the ſaid four hundred pounds, to the ſaid J. I. Howell, her executrix, adminiſtratrix, and aſſigns; and when the ſaid M. E. Howell ſhould attain her age of twenty-one years, or be married, ſhould pay the ſum of one hundred pounds, the remainder of the ſaid ſum of four hundred pounds, to her the ſaid M. E. Howell, her executors, adminiſtrators, and aſſigns, and in the mean time ſhould pay and apply the intereſt and produce of the ſaid ſeveral ſums of three hundred pounds and one hundred pounds ſeverally bequeathed to the ſaid J. I. Howell, and M. E. Howell as aforeſaid, and that whereas the ſaid Thomas Lewis was ſince dead before calling in the ſaid four hundred pounds and placing the ſame out at intereſt, in purſuance of the directions given in and by the ſaid will, leaving him the ſaid Walter Rice Howell him ſurviving, and that the ſaid J. I. Howell, and M. E. Howell, at the time of the making the ſaid indenture, were infants, and unmarried; and that whereas the ſaid Thomas Howell, their father, who was intitled to the annual intereſt of the ſaid four hundred pounds during their minority until they reſpectively married, for their maintenance and education, ſtanding indebted to the ſaid W. R. Howell in manner in the ſaid indenture mentioned, and for the better ſecuring the payment of certain annuity or yearly ſum of one hundred and ſeventy-five pounds therein mentioned, to the ſaid Walter Rice Howell, he the ſaid Thomas Howell for the conſiderations therein mentioned, and by virtue of all and every power in the ſaid Thomas Howell veſted, did, for himſelf, his heirs, executors, and adminiſtrators, by the ſaid indenture order and direct the ſaid Walter Rice Howell to call in the ſaid four hundred pounds, and to lay out the ſame on good ſecurity, from the date of the execution thereof, and to retain the yearly intereſt and produce thereof in his hands for the purpoſe aforeſaid, until the ſaid J. I. Howell, and M. E. Howell ſhould reſpectively attain the age of twenty-one years, or ſhould be married, which ſhould firſt happen, or the ſaid yearly intereſt

of the ſaid ſum of four hundred pounds being not paid to or retained by the ſaid Walter Rice Howell and his aſſigns for his and their own uſe and benefit, at the expence and charges of the maintenance and education of the ſaid children as aforeſaid, then for the further ſecuring the payment of twenty pounds to the ſaid W. R. Howell, and his aſſigns, for the life of the ſaid W. R. Howell; he the ſaid J. Howell, for himſelf, his heirs, executors, and adminiſtrators, and for every of them, did further covenant, promiſe, grant, and agree to and with the ſaid W. R. Howell, and his aſſigns, and to and with every of them, by the ſaid indenture in manner and form following, that is to ſay, that he the ſaid Thomas Howell, his executors, or ſome or one of them, ſhould and would yearly and every year during the term of the natural life of the ſaid W. R. Howell, from and immediately after the ſaid J. I. Howell, and M. E. Howell attaining their reſpective ages of twenty-one years, or be married, which ſhould firſt happen, or the ſaid yearly intereſt of four hundred pounds being not paid or retained by the ſaid Walter Rice Howell as aforeſaid, well and truly pay, or cauſe to be paid to the ſaid Walter Rice Howell, and his aſſigns, the further ſum of twenty pounds, for and in lieu of the intereſt money of the ſaid ſum of four hundred pounds, ſo bequeathed by the ſaid Mary Evans as aforeſaid, clear of all deductions, charges, taxes, aſſeſſments, or impoſitions: and the ſaid Jane in fact further ſaith, that the ſaid Thomas Howell, after making of the ſaid indenture, to wit, on the firſt day of March, in the year of our Lord 1789, at London aforeſaid, in the pariſh and ward aforeſaid, died, and after the death of the ſaid Thomas Howell, to wit, on the thirtieth day of December, in the third year, 1789, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid W. R. Howell alſo died, leaving the ſaid J. I. Howell, and M. E. Howell in the ſaid indenture mentioned, him ſurviving, and without their having attained, or either of them having attained the age of twenty one years, or been or being married: and the ſaid Jane in fact further ſaith, that on the twenty ninth day of September next before the death of the ſaid Thomas Howell, to wit, on the twenty-ninth day of September, in the year of Our Lord 1788, at London aforeſaid, in the pariſh and ward aforeſaid, a large ſum of money, to wit, the ſum of fifty-five pounds ten ſhillings of the ſaid annuity or yearly ſum of twenty-ſeven pounds fifteen ſhillings, in the ſaid indenture mentioned, for two years of the ſaid annuity or yearly ſum of twenty-ſeven pounds, ending and ended on the day and year laſt aforeſaid, became and was due and owing and payable from the ſaid Thomas Howell to the ſaid W. R. Howell, under and by virtue of the ſaid indenture, and of the ſaid covenant of the ſaid Thomas Howell in that behalf made as aforeſaid: and the ſaid Jane in fact further ſaith, that from the time of the making of the ſaid indenture, until the twenty-ninth day of September next before the death of the ſaid W. R. Howell, to wit, on the twenty-ninth day of September, in the ſaid year 1789, the ſaid yearly intereſt

in

in the ſaid indenture mentioned of the ſaid four hundred pounds therein alſo mentioned, was not paid to or retained by the ſaid W. R. Howell, but ſuch intereſt was for and during all that time, had and received by the ſaid Thomas Howell to his own private uſe and benefit, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and that on the day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, a large ſum of money, to wit, the ſum of ſixty pounds of the ſaid yearly ſum of twenty pounds in the ſaid indenture mentioned, and thereby as aforeſaid covenanted to be paid to the ſaid W. R. Howell, in the event of ſuch intereſt as aforeſaid not being paid or retained by him the ſaid W. R. Howell, for divers, to wit, three of the yearly payments of the ſaid ſum of twenty pounds in the ſaid indenture mentioned, became and was due, owing and payable to the ſaid W. R. Howell, under and by virtue of the ſaid indenture, and of the ſaid covenant of the ſaid Thomas Howell in that behalf made as aforeſaid, which ſaid ſeveral ſums of fifty-five pounds ten ſhillings, and ſixty pounds ſo becoming and being due and payable under and by virtue of the ſaid indenture, and of the aforeſaid covenants of the ſaid Thomas Howell, are ſtill due and in arrear from the ſaid Jane, as ſuch adminiſtratrix as aforeſaid, unto the ſaid Walter Powell, executor of the laſt will and teſtament of the ſaid W. R. Howell deceaſed, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jane further ſays, that ſhe hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid Thomas Howell deceaſed, at the time of his death, which have ever come to the hands of the ſaid Jane to be adminiſtered, except goods and chattels to the value of twenty pounds, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and that ſhe the ſaid Jane hath not, nor on the day of exhibiting the bill of the ſaid Richard, or at any time afterwards, had ſhe any goods or chattels which were of the ſaid Thomas Howell deceaſed, at the time of his death, in her hands to be adminiſtered, except the ſaid goods and chattels to the value of twenty pounds, which are not ſufficient to pay off or ſatisfy the money ſo as aforeſaid due and owing on the ſaid ſeveral judgments ſo recovered as aforeſaid, and on the ſaid indenture and covenants herein before mentioned, to which they are charged and bound; and this ſhe is ready to verify: wherefore ſhe prays judgment if the ſaid Richard ought to have or maintain his aforeſaid action thereof againſt her, &c.

V. LAWES.

AND the ſaid Sarah Percival and Thomas, by H. Roſſer their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid Thomas Hales, deceaſed, did not undertake and promiſe in manner and form as the ſaid Margaret hath above thereof complained againſt them; and of this they put themſelves upon the country, &c.; and the ſaid Sarah, for further plea in this behalf, [illegible] obtained

obtained, according to the form of the ſtatute in ſuch caſe made and provided, for herſelf only ſays, that the ſaid M. ought not to have or maintain her aforeſaid action thereof againſt her, becauſe ſhe ſays, that ſhe has fully adminiſtered all and ſingular the goods and chattels which were of the ſaid Thomas Hales, deceaſed, at the time of his death, which have ever come to or been in her hands, to be adminiſtered, and that ſhe the ſaid Sarah hath not, nor had ſhe, on the day of exhibiting the bill of the ſaid Margaret, or has ſhe had at any time ſince, any goods or chattels which were of the ſaid Thomas Hales, deceaſed, at the time of his death, in the hands of the ſaid Sarah, to be adminiſtered; and this ſhe the ſaid Sarah is ready to verify: wherefore ſhe prays judgment if the ſaid Margaret ought to have or maintain her aforeſaid action thereof againſt her, &c.; and for further plea (the ſame plea by defendant Percival); and for further plea, &c. (ſame plea by defendant Thomas Green.) E. WIGLEY.

Replication taking iſſue on the *non aſſumpſit*, and the conditional judgment of aſſets in futuro on the other three pleas jointly on the event of the iſſue being found for the plaintiff.

And the ſaid Margaret, as to the ſaid plea of the ſaid Sarah Percival and Thomas, by them firſt above pleaded in bar, and whereof they have put themſelves upon the country doth the like, &c.; and as to the ſaid plea of the ſaid Sarah by her ſecondly above pleaded in bar, and alſo as to the ſaid plea of the ſaid Percival by him thirdly above pleaded in bar, and alſo as to the ſaid plea of the ſaid Thomas Green by him laſtly above pleaded in bar, the ſaid Margaret ſays, that inaſmuch as the ſaid Sarah Percival and Thomas Green, executors as aforeſaid, have not in or by their ſaid ſeveral pleas, denied the ſeveral breaches of the ſaid Margaret, adminiſtratrix as aforeſaid, nor but that ſhe the ſaid Margaret, adminiſtratrix as aforeſaid, ought to recover her damages aforeſaid by her ſuſtained on occaſion of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; and inaſmuch as the ſaid Margaret cannot deny but that the ſaid Sarah Percival and Thomas Green have not now, nor had any or either of them at the time of exhibiting the bill of the ſaid Margaret aforeſaid the ſaid Sarah Percival and Thomas Green, any goods or chattels which were of the ſaid Thomas Hales deceaſed, at the time of his death in their hands to be adminiſtered, prays judgment and her damages, by reaſon of the non-performance of the ſeveral promiſes and undertakings in the ſaid declaration mentioned, to be adjudged and to be levied of the goods and chattels which were of the ſaid Thomas Hales deceaſed at the time of his death, and which ſhall hereafter come to the hands of the ſaid Sarah Percival and Thomas Green to be adminiſtered; therefore it is adjudged by his majeſty's court, before the king himſelf here, that the ſaid Margaret do recover againſt the ſaid Sarah Percival and Thomas Green, executors as aforeſaid, her damages, by reaſon of the non-performance of the ſaid ſeveral promiſes and under-

dertakings in the ſaid declaration mentioned, to be levied of the goods and chattels which were of the ſaid Thomas Hales deceaſed at the time of his death, and which ſhall hereafter come to the hands of the ſaid Sarah Percival and Thomas Green, executors as aforeſaid, to be adminiſtered, in caſe the ſaid iſſue above joined between the ſaid parties ſhall be found for the ſaid Margaret, but becauſe it is unknown to the court of our lord the king, before the king himſelf now here, what damages the ſaid Margaret hath ſuſtained by reaſon of the premiſes, and becauſe it is uncertain whether the ſaid Sarah Percival and Thomas Green will be convicted upon the ſaid iſſue above joined between the parties aforeſaid; and becauſe it is convenient and neceſſary, if they be convicted thereupon, that there be but one taxation of damages in this ſuit: therefore let ſuch taxation be ſtayed until the trial and determination of the iſſue above joined between the parties aforeſaid; and in order to try the ſaid iſſue, let a jury come, &c.

JNO. BARROW.

DESCHAMPS AND EXECUTORS, *at the ſuit of* RANDALL AND ANOTHER, ASSIGNEES.

AND the ſaid John Deſchamps, James Deſchamps, and Catharine Deſchamps, executors and executrix aforeſaid, by John Beard their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid John Randall and Samuel Lloyd, aſſignees as aforeſaid, ought not to have or maintain their aforeſaid action againſt them, becauſe they ſay, that one Samuel Marſh, in the lifetime of the ſaid Giles Hudſon, to wit, in Eaſter term in the twenty-ſecond year of the reign of our lord the now king, in the court of our ſaid lord the king, before the king himſelf here (the ſaid court then and there being held at Weſtminſter in the county of Middleſex), by bill without the writ of our ſaid lord the king, by the conſideration and judgment of the ſaid court recovered againſt the ſaid Giles Hudſon as well a certain debt of ſixty-four thouſand pounds, as forty-three marks for the damages which he had ſuſtained by reaſon of the detaining that debt, whereof the ſaid Giles Hudſon was convicted, as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in full force and effect, not reverſed, ſatisfied, or otherwiſe vacated, and there is now due and owing thereupon to the ſaid Samuel Marſh a large ſum of money, to wit, the ſum of one hundred and five pounds twelve ſhillings and tenpence of lawful money of Great Britain, to wit, at London aforeſaid, in the parish and ward aforeſaid: And the ſaid defendants further ſay, that the ſaid G. H. in his lifetime, to wit, on the eighth of January A. D. 1772, to wit, at London, &c. aforeſaid, by his certain

Plea to action of the ſuit of plaintiffs, as aſſignees under commiſſion of bankrupt againſt defendants as executors, of outſtanding debts of bond for payment of money only, bonds for payment of [illegible] on condition which are not performed, of debts due to the aſſignees of plaintiffs, and defendants ſay that the commiſſioners brought an action againſt defendants for the ſame, which was ſtill depending, of debts owing to againſt in his lifetime and againſt defendants as executors, of debts due by ſimple contract to teſtator. Another bond, for payment of a large ſum in conſideration of a marriage between defendant's teſtator and one of defendants, on condition, which took effect, which money is ſtill due to ſaid of defendants, and unſatisfied.

writing-

writing obligatory, ſealed with his ſeal, and now ſhown to the court of our lord the king before the king himſelf here, the date whereof is the day and year laſt aforeſaid; and which ſaid writing-obligatory was then and there made for a good and valuable conſideration, acknowledged himſelf to be held and firmly bound to one John Deſchamps the elder, now deceaſed, in his lifetime, and the ſaid John Deſchamps the now defendant, in the penal ſum of ſeventeen thouſand four hundred pounds of lawful money of Great Britain, with and under a certain condition thereto ſubſcribed, that in caſe a marriage between the ſaid Giles Hudſon and the ſaid Catharine Hudſon (then Catharine Deſchamps), ſhould take effect, and ſhe the ſaid E. H. ſhould happen to ſurvive the ſaid G. H. her then intended huſband, or in caſe there ſhould be any child or children between him and the ſaid G. H. and the ſaid C. H. living at the time of the deceaſe of the ſaid G. H. or born at due time after the deceaſe, then if the heirs, executors, or adminiſtrators of him the ſaid G. H. did or ſhould, at [illegible] or immediately after the time of his deceaſe, well and truly pay or cauſe to be paid unto the ſaid J. D. the elder, and the ſaid J. Deſchamps the now defendant, or one of them, and the ſurvivor of them, or the executors or adminiſtrators of ſuch ſurvivor, the ſum of eight thouſand ſeven hundred pounds, together with intereſt for the ſame at and after the rate of four pounds per cent. per annum; and from the time of the deceaſe of him the ſaid G. H. up to the time the ſaid ſum of eight thouſand ſeven hundred pounds ſhould be paid for the benefit of ſuch perſon and perſons, and to and for, and upon the ſeveral uſes, truſts, intents and purpoſes mentioned, expreſſed, and declared in and by one indenture tripartite, bearing even date with the ſaid bond, and made or mentioned to be made between the ſaid Giles Hudſon of the firſt part, the ſaid C. H. of the ſecond part, and the ſaid J. D. the elder, and J. D. the now defendant, of the third part (one part of which ſaid indenture, ſealed with the reſpective ſeals of the ſaid G. H. the ſaid C. H. J. D. the elder, and J. D. the now defendant, they the ſaid defendants now bring into court, the date whereof is the day and year laſt aforeſaid), then the ſaid obligation was to be void and of no effect, otherwiſe to be and remain in full force and virtue; which ſaid writing-obligatory, at the time of the death of the ſaid G. H. was in full force and effect, not ſatisfied, diſcharged, or cancelled: And the ſaid defendants further ſay, that the ſaid marriage between the ſaid G. H. and the ſaid Catharine Hudſon in the ſaid condition of the ſaid writing-obligatory mentioned, after the making of the ſaid writing-obligatory, to wit, on the ninth day of January in the year laſt aforeſaid, did take effect, to wit, at London, &c. aforeſaid; and the ſaid Catharine Hudſon ſurvived the ſaid G. H. and divers, to wit, three children between the ſaid G. H. and the ſaid C. H. were there living at the time of the deceaſe of the ſaid G. H. and [illegible] J. D. the now defendant [illegible] the ſaid J. D. the elder, who died in the lifetime of the ſaid G. H. whereby,

and

and according to the tenor and effect of the ſaid condition of the ſaid writing-obligatory, there was and is due and owing thereupon to the ſaid John D. the now defendant, the ſaid ſum of eight thouſand ſeven hundred pounds in the ſaid condition mentioned: *And* the ſaid defendants further ſay, that the ſaid G. H. in his lifetime heretofore, to wit, on the twentieth day of April A. D. 1760, to wit, at London, &c. aforeſaid, by his certain writing-obligatory, ſealed with his ſeal, and now ſhewn to the court of our ſaid lord the king before the king himſelf here, the date whereof is the day and year laſt aforeſaid (which ſaid mentioned writing-obligatory was then and there made for a juſt and true debt), acknowledged himſelf to be held and firmly bound to the ſaid James Danch in the penal ſum of one thouſand one hundred pounds of like lawful money of Great Britain, with and under a certain condition thereto ſubſcribed, that if the ſaid G. H. his heirs, executors or adminiſtrators, or any of them, ſhould or did pay, or cauſe to be paid unto the ſaid J Danch the ſum of five hundred and fifty pounds with intereſt for the ſame, after the rate of five pounds by the hundred pounds by the year, of good and lawful money of Great Britain, on the twentieth of October next enſuing the date thereof the ſaid laſt mentioned writing-obligatory was to be void or elſe to remain in full force; which ſaid laſt mentioned writing-obligatory, at the time of the death of G. H was in full force and effect, not ſatisfied, diſcharged, or cancelled, and there was then due and owing thereupon, for principal and intereſt of the ſaid James D. a large ſum of money, to wit, the ſum of five hundred and fifty-nine pounds two ſhillings and threepence of lawful money of Great Britain: *And* the ſaid defendants further ſay, that by a certain indenture made on the fifteenth of May A. D. 1781, to wit, at Weſtminſter in the county of Middleſex, between John Thomas Batt eſquire, Francis Hargrave eſquire, and Francis Rauſel gentleman, the major part of the commiſſioners named and authorized in and by a commiſſion of bankruptcy awarded and iſſued againſt William Gines and Eleneæ Atkinſon of Lombard-ſtreet in the city of London, bankers and copartners, of the firſt part, one David Caddell and William Wheatly (by the name and deſcription of David Caddell of Chancery-lane London, gentleman, meſſenger under the ſaid commiſſion, and William Wheatly, of Erith in the county of Kent, eſquire; which ſaid D. C. and William Wheatly, together with Giles Hudſon of Basinghall-ſtreet in the city of London, merchant, were proviſional aſſignees of the ſaid bankrupts eſtate and effects, of the ſecond part, and the ſaid Giles Hudſon in his lifetime, and the ſaid plaintiffs, by the names and deſcriptions of the ſaid Giles Hudſon, John Randall of Southampton ſtreet Bloomſbury, ſhipbuilder, and Samuel Lloyd, of Thames-ſtreet London, hoſteller) of the third part (reciting, as thereon is recited) the ſaid G. H. J. R. and S. L. did for themſelves ſeverally and reſpectively and for the ſeveral and reſpective heirs, executors, and adminiſtrators, covenant, promiſe, and agree to and with

Another bill.

That defendant's teſtator together with [illegible] were aſſignees of a bankrupt, and received effects, but never made a dividend, whereby defendants are liable to the commiſſioners, who have brought an action for same, which is ſtill depending.

with the ſaid commiſſioners, parties to the ſaid indenture, that the ſaid G. H. J. R. and S. L. their executors, adminiſtrators, and aſſigns, ſhould and would, from time to time, and at all times thereafter, upon the reaſonable requeſt or other notice to them given for that purpoſe, make, render, and give unto the ſaid commiſſioners, parties to the ſame indenture, or the major part of the ſaid commiſſioners, in and by the ſaid commiſſion named and authorized, or the major part of the commiſſioners to be named in and by any renewed commiſſion which might be awarded againſt the ſaid W. G. and E. A. at ſuch time and place as they ſhould appoint, a true, juſt, and perfect account in writing under the hands of the ſaid G. H. J. R. and S. L. then executors and adminiſtrators of all and ſingular the eſtate and effects of the ſaid W. G. and E. A. which they the ſaid G. H. J. R. and S. L. their executors and adminiſtrators, ſhould have then recovered and received by virtue or means of the ſame deed of aſſignment or otherwiſe, and all ſuch monies, as upon ſuch account ſhould appear to have been ſo had and received, ſhould and would well and truly pay and diſtribute, or cauſe to be paid and diſtributed unto and amongſt all and every the creditors of the ſaid W. G. and E. A. who had then already ſought relief, or ſhould thereafter in due time come and ſeek relief under and by virtue of the ſaid commiſſion, according to the directions of the ſeveral ſtatutes therein mentioned, in proportion to the ſeveral debts owing to and proved by them reſpectively under the ſaid commiſſion, in ſuch manner as the ſaid commiſſioners, or the major part of them, ſhould, by an order for that purpoſe, direct and appoint, as by the ſame indenture will more fully appear, by virtue of which ſame indenture, they the ſaid G. H. in his lifetime, J. R. and S. L. became intitled to all and ſingular the goods and chattels, debts, ſum and ſums of money, and all other the eſtate and effects of and belonging unto the ſaid W. G. and E. A. upon the truſts in the ſaid indenture mentioned: And the ſaid defendants in fact ſay, that at and before the order of dividend hereafter mentioned, divers debts to a large amount to wit, the ſum of forty-three thouſand four hundred and thirty ſix pounds five ſhillings and tenpence, were proved under the ſaid commiſſion, and ſundry claims were alſo duly made of other debts under the ſaid commiſſion to a large amount, to wit, the further ſum of one thouſand three hundred and ninety pounds fifteen ſhillings and elevenpence, to wit, at Weſtminſter in the county of Middleſex aforeſaid: And the ſaid defendants further ſay, that the ſaid G. H. J. R. and S. L. in the lifetime of the ſaid G. H. and before the time of the making of the ſaid order of dividend, had recovered and received divers large ſums of money, part of and ariſing from the ſale of the eſtates and effects of the ſaid W. G. and E. A. by virtue and means of the ſaid indenture, to wit, at Weſtminſter aforeſaid, and afterwards, to wit, on the tenth day of December A. D. 1781, at Weſtminſter in the county of Middleſex aforeſaid, the ſaid G. H. J. R. and S. L. in the lifetime of the ſaid

G. H.

G. H. admitted that they had ſufficient money in their hands to pay all the creditors of the bankrupts who had proved their debts under the ſaid commiſſion, and to reſerve for thoſe who had claimed under the ſame, after the rate of two ſhillings in the pound on the reſpective debts ſo proved and claimed; and the ſaid John Thomas Batt, Francis Hargrave, and Francis Ruſſel, purſuant to the ſaid commiſſion, did then and there order and direct that the ſaid G. H. J. R and S. L. ſhould forthwith pay and divide unto and amongſt all and every the creditors of the ſaid bankrupts who had proved their debts under the ſaid commiſſion two ſhillings in the pound upon ſuch their reſpective debts, and reſerve the ſame for thoſe who had ſo claimed, until they ſhould have proved ſuch their reſpective claims, whereof the ſaid G. H. J. R. and S. L. afterwards, in the lifetime of the ſaid G. H. to wit, on the ſame day and year laſt aforeſaid, at, &c. aforeſaid, had notice; and though more than a reaſonable time has elapſed for that purpoſe, yet the ſaid G. H. J. R. and S. L. in the lifetime of the ſaid G. H. did not, nor did any or either of them pay and diſtribute, nor have the ſaid J. R. and S. L. or any or either of them, ſince his deceaſe, diſtributed and paid (although often requeſted) unto and amongſt the ſaid creditors of the ſaid bankrupts, who had proved the debts under the ſaid commiſſion as aforeſaid, or any of them, two ſhillings in the pound upon ſuch their reſpective debts, or any ſum of money whatſoever, but the ſame and every part thereof is ſtill unpaid, contrary to the form and effect of the ſaid indentures, and of the ſaid covenant of the ſaid Giles Hudſon in that behalf made as aforeſaid: And the ſaid executors, executrix and executrix as aforeſaid, in fact further ſay, that the damages ſuſtained by the ſaid J. J. Batt, F. H. and J. R. by reaſon of the non-performance of the ſaid covenant in manner aforeſaid, amount to a large ſum of money, to wit, the ſum of one thouſand four hundred and thirty ſix pounds ſeventeen ſhillings and eightpence, which ſaid ſum of one thouſand four hundred and thirty ſix pounds ſeventeen ſhillings and eightpence is due and owing from the ſaid defendant, as executor and executrix aforeſaid to the ſaid J. J. B. F. H. and they the ſaid J. F B. F. H. and F R. have brought an action for the ſame, which is ſtill depending againſt the ſaid defendants, executors and executrix as aforeſaid, to wit, at Weſtminſter aforeſaid in the county of Middleſex aforeſaid: And the ſaid J D. the now defendant, J. Danch, and C. H. further ſay, that the ſaid G. H. in his lifetime, and at the time of his death, was truly and juſtly indebted to the ſaid James Danch and one Elizabeth Maynard, widow, and one John Cartwright Maynard's partners and joint dealers, in the further ſum of one hundred and ten pounds fifteen ſhillings and tenpence of lawful money, for divers goods, wares, and merchandizes by the ſaid John D. E. Maynard, and J. C. Maynard before that time ſold and delivered to the ſaid G. H. and at his ſpecial inſtance and requeſt, and for the work and labour, care and diligence of the ſaid John Danch, Elizabeth M. and J. C. M. before that time [illegible], performed, and beſtowed in and about the

Debts [illegible] nerſhip [illegible] ſold [illegible] vered, the [illegible] and [illegible]

Another judgment to another person, unsatisfied, recovered against defendants, as executors.

buſineſs of the ſaid G. H. and for the ſaid G. H. and at his like ſpecial inſtance and requeſt: And the ſaid defendants further ſay, that one Ann Hudſon, ſpinſter, after the death of the ſaid G. H. to wit, in Faſter term in the twenty-third year of the reign of our lord the now king, in the court of our ſaid lord the king before the king himſelf here, to wit, at Weſtminſter aforeſaid, by bill without the writ of our ſaid lord the king, and by the conſideration and judgment of the ſame court recovered againſt the ſaid defendants, as executors and executrix as aforeſaid, ſix hundred and ſixty-five pounds nineteen ſhillings and fourpence for the damages which he had ſuſtained by reaſon of the not performing certain promiſes and undertakings theretofore made by the ſaid G. H. in his lifetime to the ſaid Ann Hudſon, as alſo five pounds for her coſts and charges by her about her ſuit in that behalf expended, to be levied of the goods and chattels which were of the ſaid G. H. at the time of his death, and which, after ſatisfying the ſeveral debts and ſums of money therein mentioned, ſhould thereafter come to the hands of the ſaid defendants, or any or either of them, to be adminiſtered, as by the record and proceedings thereof now remaining in the court of our ſaid lord the king before the king himſelf here, to wit, at Weſtminſter aforeſaid, more fully appears; which ſaid laſt-mentioned judgment ſtill remains in full force and effect, not in anywiſe reverſed, ſatisfied, or otherwiſe vacated [there were a great number of other judgments, ſimilar to the laſt contained in the plea]: And the ſaid defendants further ſay, that the ſeveral judgments ſo had and obtained by the ſaid Ann Hudſon, &c. &c. &c. &c. &c. reſpectively againſt them the ſaid defendants, as executors and executrix as aforeſaid, were had and obtained for a true and juſt debt, really and bonafide due and owing from the ſaid G. H. at the time of his death to them the ſaid Ann Hudſon, &c. &c. &c. &c. &c. reſpectively, and at the time of the rendering the ſaid ſeveral judgments, wholly unpaid and unſatisfied: And the ſaid defendants further ſay, that they have fully adminiſtered all and ſingular the goods and chattels which were of the ſaid G. H. at the time of his death, which have ever come to the hands of them the ſaid defendants, or any or either of them, to be adminiſtered, except goods and chattels to the value of ten pounds; and that they have not, nor hath any or either of them, nor had they, or any or either of them, at the time of the exhibiting the ſaid bill of the ſaid plaintiffs, or at any time ſince, any goods or chattels which were of the ſaid G. H. at the time of his death, in their or any of their hands, to be adminiſtered (except the ſaid goods and chattels to the value aforeſaid, which are not ſufficient to pay and ſatisfy the ſeveral debts and ſums of money due and owing in manner and on the ſeveral occaſions aforeſaid, and which are liable and ſubject to the payment and ſatisfaction thereof; and this they the ſaid defendants are ready to verify: wherefore they pray judgment if the ſaid plaintiffs ought to have or maintain their aforeſaid action thereof againſt them; and they bring into court here the

the letters teſtamentary of the ſaid G. H. deceaſed, whereby it fully appears to the court here that they the ſaid defendants are executors and executrix of the laſt will and teſtament of the ſaid G. H. deceaſed, and have the execution thereof, &c.

Drawn by MR. TIDD.

SMITH, EXECUTOR, &c. *againſt* HIGFORD, CLERK, AND ANOTHER ADMINISTRATOR, &c.

AND the ſaid plaintiff prays a day to imparl to the ſaid plea, and it is granted him, &c. and thereupon a day is given to the parties aforeſaid, to come before our lord the king at Weſtminſter, on Tueſday next after the eighth day of St. Hilary, that is to ſay, for the ſaid plaintiff to imparl to the ſaid plea, and then to reply to the ſame, &c. at which day, before our lord the king at Weſtminſter, came the parties aforeſaid by their attornies aforeſaid: And the ſaid plaintiff ſays, that he, by reaſon of any thing by the ſaid defendants in their ſaid plea above alledged, ought not to be barred from having his aforeſaid action thereof maintained againſt the ſaid defendants; becauſe he ſaith that he the ſaid plaintiff, for the recovery of his damages by him ſuſtained on occaſion of the not performing of the ſaid promiſes and undertakings in the ſaid declaration mentioned, after the death of the ſaid Anthony Croſſe, to wit, on the fifth day of September, in the twentieth year of the reign of our lord the now king, ſued and proſecuted out of the court of our lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of Middleſex), a certain writ of our ſaid lord the king, called a *latitat*, againſt the ſaid defendant, directed to the ſheriff of Glouceſterſhire, by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould take the ſaid defendants by the names and deſcription of, &c. if they might be found in his bailiwick, and them ſafely keep, ſo that the ſaid ſheriff might have their bodies before our lord the king at Weſtminſter, on Monday next after the morrow of All Souls then next following, to anſwer unto the ſaid plaintiff in a plea of treſpaſs, and that the ſaid ſheriff ſhould have there then that writ, as by the ſaid writ may more fully and at large appear; which ſaid writ ſo ſued and proſecuted out of the ſaid court by the ſaid plaintiff againſt the ſaid defendants, with intent that the ſaid defendants might each be ſued reſpectively with a copy thereof according to the form of the ſtatute in ſuch caſe made and provided, and be thereby compelled to file and put in common bail at the return thereof in the ſaid court of our ſaid lord the king, before the king himſelf, at the ſuit of the ſaid plaintiff, and that the ſaid plaintiff might, upon ſuch their filing and putting in ſuch their common bail, exhibit his bill againſt the ſaid defendants, as adminiſtrators aforeſaid, all and ſingular the goods and chattels, rights and credits, which were of the ſaid Anthony Croſſe deceaſed, at the time of his death, with the will of the ſaid Anthony annexed, for the recovery of his damages aforeſaid: And the ſaid plaintiff further ſaith,

that afterwards, to wit, on the eleventh day of September, in the twentieth year aforesaid, the said Henry, one of the defendants, was served in due manner with a copy of the said writ, and afterwards, to wit, on the sixth day of October, in the year aforesaid, the said John, the other of the defendants, was likewise sued with [illegible] copy of the said writ according to the [illegible]tute in such case made and provided, to wit. at Yate, and then and there had notice of the said suit of the said plaintiff: And the said plaintiff further saith, that at the return of the said writ, on Monday next after the morrow of All Souls therein mentioned, before our lord the king at Westminster, came, as well the said plaintiff, by his said attorney as the said defendants, by Edward Chum, the younger, their attorney aforesaid, and thereupon the said plaintiff then and there, to wit, in and of Michaelmas term, in the twenty-first year of the reign of the now king, exhibited his bill against the said defendants in the said court here, in manner and form aforesaid: And the said plaintiff says, that the said defendants, at the time of the said suing and prosecuting of the said writ of *latitat* out of the said court here, and afterwards and after the said defendants were served with copies thereof, and had notice of the said suit of the said plaintiff as aforesaid, had divers goods and chattels which were of the said A. C. deceased, at the time of his death in their hands to be administered, to the value of the damages aforesaid, by the said plaintiff above demanded, wherewith the said defendants might and ought to have satisfied the said plaintiff his damages aforesaid, to wit, at Yate, aforesaid; and this he is ready to verify: wherefore he prays judgment and his damages, by reason of the premises to be adjudged to him, &c. FOSTER BOWER.

HIGFORD, CLERK, AND ANOTHER ADMINISTRATOR, &c. *at the suit of* SMITH, EXECUTOR, &c.

And the said defendants, as to the said plea of the said plaintiff by him above pleaded by way of reply to the said plea of the said defendants by them above pleaded in bar, say, that notwithstanding any thing by the said plaintiff in his said plea so pleaded by way of reply alledged, he the said plaintiff ought not to have his aforesaid action thereof maintained against them; because they say that though true it is that the said plaintiff did sue and prosecute out of the said court of our said lord the king, before the king himself now here, the said writ of *latitat* in his said plea so pleaded by way of reply mentioned, and that they the said defendants were respectively served with a copy thereof, and had notice of the said suit of the said plaintiff, as the said plaintiff hath above in his said plea so pleaded by way of reply alledged, yet, for rejoinder in this behalf, they the said defendants say, that they the said defendants had not at the time of the suing and prosecuting of the said writ of *latitat* out of the said court here, and afterwards and after the said defendants were sued with copies thereof, and had notice of the said suit of the said plaintiff as aforesaid, or at any or either of those times, goods or chattels which

which were of the ſaid A. C. at the time of his death, in their hands to be adminiſtered, wherewith he might or could have ſatisfied the ſaid plaintiff his damages aforeſaid, or any part thereof, in manner and form as the ſaid plaintiff hath above in his ſaid plea by him above pleaded by way of reply alledged; and of this the ſaid defendants put themſelves upon the country, &c.

V. LAWES.

BOLTON, AND ANOTHER EXECUTORS, &c. *at the ſuit of* ECLES, GENT. ONE, &c.

AND the ſaid defendants, by A B. their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid plaintiff ought not to have or maintain his aforeſaid action againſt them; becauſe they ſay that they the ſaid defendants have fully adminiſtered all and ſingular the goods and chattels which were of the ſaid T. W. deceaſed, at the time of his death, and which have ever come to the hands of the ſaid defendants, and that they have not, nor hath either of them, nor at the time of the exhibiting of the bill of the ſaid plaintiff, or at any time afterwards, had they or either of them, in their or either of their hands or poſſeſſion, any goods or chattels which were of the ſaid T. W. deceaſed, at the time of his death unadminiſtered, whereby the ſaid plaintiff could or might have been ſatisfied his damages on occaſion of the non-performance of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, or any part thereof; and they the ſaid defendants are ready to verify, wherefore they pray judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action againſt them, &c.: And for further plea in this behalf, they the ſaid defendants, by leave, &c. ſay, that the ſaid plaintiff ought not to have or maintain his aforeſaid action thereof againſt them, becauſe they ſay, that one Richard Perkes and one Daniel Morgan, as aſſignees of the eſtates and effects of one Thomas Downing, a bankrupt within the true intent and meaning of the ſeveral ſtatutes made, and then and now in force concerning bankrupts, ſome or one of them, in the lifetime of the ſaid T. W. deceaſed, to wit, in Michaelmas term, in the twenty-firſt year of the reign of our lord the now king, in the court of our ſaid lord the king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter in the county of Middleſex), by the conſideration of the ſaid court, recovered againſt the ſaid T. W. one hundred and fifty-five pounds of lawful, &c. which, in and by the ſaid court of our ſaid lord the king, before the king himſelf, were adjudged to them the ſaid R. P. and D. M. as ſuch aſſignees as aforeſaid, for their damages which they had ſuſtained, as well on occaſion of the not performing certain promiſes and undertakings by the ſaid T. W. in his lifetime, and before the ſaid J. D. became ſuch bankrupt as aforeſaid, made to the ſaid J. D. as for their coſts and charges by them about the ſuit in that behalf expended, whereof the ſaid T. W. in his li-

Plea of ſuperior debts, to wit, a JUDGMENT RECOVERED by aſſignee of a bankrupt againſt defendants' teſtator, in his lifetime, and bonds outſtanding, money expended by one of the defendants in diſcharge and ſatisfaction of teſtator's debts, and *plene adminiſtravit præter* ſo which are not ſufficient to ſatisfy, &c. with which they are charged.

time was convicted, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, more fully and at large appears; which ſaid judgment has not been in any manner reverſed, annulled, ſet aſide, or vacated, but is ſtill in full force, ſtrength and effect, for a part of the money therein mentioned, that is to ſay, for the ſum of one hundred pounds, which ſtill remains unpaid and unſatisfied, to wit, at Weſtminſter aforeſaid: And the ſaid defendants further ſay, that the ſaid T. W. deceaſed, in his lifetime, to wit, on the fourteenth day of June A. D. 1775, at Weſtminſter aforeſaid, by his certain writing-obligatory, bearing date the day and year laſt aforeſaid, and ſealed with his ſeal, and then and there made for a true and juſt debt, acknowledged himſelf to be held and firmly and to one Joſeph Saunders: *And* the ſaid defendants further ſay, that the ſaid T. W. in his lifetime were ſeveral other outſtanding bonds pleaded]: And the ſaid defendants further ſay, that J. B. (one the defendants), ſo being ſuch executor as aforeſaid, after the deceaſe of the ſaid W. and before the exhibiting of the ſaid bill of the ſaid plaintiff them the ſaid defendants, to wit, on, &c. at, &c. advanced ſ ſted, paid, laid out, and expended divers ſums of money, amounting to a large ſum of money, to wit, the ſum of ve hundred pounds of lawful money of Great Britain, of his proper monies, in and about the payment, ſatisfaction, and diſcharge of divers true and juſt debts, which were due and owing by and from the ſaid T. W. at the time of his deceaſe, and for and on account and in reſpect to the perſonal eſtate of the ſaid W. which ſaid ſum of five hundred pounds, by the ſaid advanced, diſburſed, paid, laid out, and expended as aforeſaid at the time of the exhibiting of the ſaid bill of the ſaid plaintiff againſt them the ſaid defendants, remained and continued, and ſtill doth remain and continue wholly in arrear, unpaid: unſatisfied, to him the ſaid J. B. to wit, at Weſtminſter aforeſaid: And they the ſaid defendants further ſay, that the ſaid ſeveral writings-obligatory herein before mentioned are, and each and every of them is ſtill outſtanding, unpaid, and unſatisfied, to wit, at Weſtminſter aforeſaid: And they the ſaid defendants further ſay, that they have fully adminiſtered all and ſingular the goods and chattels, rights and credits, which were of the ſaid T. W. deceaſed, at the time of his death, which have come to the hands of them the ſaid defendants, or either of them, to be adminiſtered, and that they have not, nor hath either of them, nor had they or either of them, at the time of exhibiting the ſaid bill of the ſaid plaintiff againſt them, or at any other time ſince, any goods or chattels which were of the ſaid T. W. deceaſed, at the time of his death in their or in either of their hands to be adminiſtered, except goods and chattels to the value of five pounds, which are not ſufficient to pay or ſatisfy the ſaid judgments and writings-obligatory herein before mentioned, and the aforeſaid demand of him the ſaid J. B. to which they are bound and chargeable; and this they are ready to verify; wherefore they

pray

One of defendants paid away his own money in diſcharge of teſtator's debts.

Plene adminiſtra except 5l. which is not ſufficient to ſatisfy thoſe debts.

pray judgment if the ſaid plaintiff ought to have or maintain his aforeſaid action againſt them, &c.

W. BALDWIN.

KAYSHAM, EXECUTRIX, &c. *at the ſuit of* BACON AND ANOTHER EXECUTORS, &c. } AND the ſaid defendant, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid plaintiffs ought not to have and maintain their ſaid action againſt her; becauſe ſhe ſays that one Frederick Young and Elizabeth his then wife, in the lifetime of the ſaid, &c. [defendant's teſtator] to wit, in Eaſter term, in the fifteenth year of the reign of our lord the now king, in his majeſty's court, before Sir William De Grey, knt. and his companions, then his majeſty's juſtices, of the bench at Weſtminſter, by the conſideration of that court recovered againſt the ſaid, &c. [defendant's teſtator], as well a certain debt of two thouſand pounds, as alſo nineteen pounds fifteen ſhillings, which in and by the ſaid court of our ſaid lord the king of the bench, were adjudged to the ſaid F. Y. and Elizabeth his wife, for the damages which they had ſuſtained, as well on occaſion of the detaining of that debt, as for their coſts and charges by them about their ſuit in that behalf expended, whereof the ſaid John [defendant's teſtator], in his lifetime, was convicted, as by the ſaid record and proceedings thereof remaining in the ſaid court of our ſaid lord the king of the bench at Weſtminſter aforeſaid, more fully and at large appears, which ſaid judgment, ſo had and obtained, was ſo had and obtained for a juſt and true debt; and the ſaid judgment ſtill remains in its full force, ſtrength, and effect, not reverſed, annulled, ſet aſide, or in any wiſe paid off or ſatisfied: And the ſaid defendant further ſaith, that ſhe hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid, &c. [defendant's teſtator], deceaſed, at the time of his death, which have ever come to her hands to be adminiſtered, except goods and chattels to the value of three hundred and ninety-four pounds, to wit, at, &c. aforeſaid; and that ſhe the ſaid defendant hath not, nor on the day of exhibiting, &c. or at any time ſince, had ſhe any goods or chattels which were of the ſaid, &c. [defendant's teſtator], deceaſed, at the time of his death in her hands to be adminiſtered, except the goods and chattels to the value of the ſaid three hundred and ninety-four pounds, which are not ſufficient to pay off and diſcharge the money due and owing on the ſaid judgment ſo recovered as aforeſaid, to which they are charged; and this ſhe is ready to verify; wherefore ſhe prays judgment if the ſaid plaintiffs ought to have or maintain their aforeſaid action againſt her, &c.

Plea of judgment recovered by A. B. at the ſuit of the plaintiffs *formerly* and *ſome*.

V. LAWES.

BLACKSTON AND OTHERS *at the ſuit of* SPELDON, EXECUTOR, &c. } AND the ſaid plaintiffs ſay, that notwithſtanding any thing by the ſaid defendant above in pleading alledged, they the ſaid plaintiffs ought not to be barred from having

Replication to the plea of ſuperſedeas debt pleaded.

ing and maintaining their aforeſaid action againſt him the ſaid defendant; becauſe, proteſting that the ſaid plea and the matter therein contained, in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law to bar them the ſaid plaintiffs from having and maintaining their aforeſaid action againſt him the ſaid defendant, for replication in this behalf they ſay, that after the making of the ſaid writing-obligatory in the ſaid plea alledged to have been made by the ſaid W. S. [defendant's teſtator], to the ſaid John Baker in the ſaid plea mentioned, and before the pleading the ſaid plea, to wit, on the firſt day of January A. D. 1783, the ſaid writing obligatory to the ſaid John Baker and all money thereon due and payable, was fully paid off, diſcharged, and ſatisfied unto him the ſaid John Baker, to wit, at Weſtminſter, &c.: But the ſaid plaintiffs in fact further ſay, that notwithſtanding ſuch payment and diſcharge of the ſaid writing-obligatory to the ſaid John Baker as aforeſaid, the ſaid writing-obligatory is ſtill kept on foot uncancelled, by the fraud and covin of the ſaid defendant, with intent to defraud them the ſaid plaintiffs of their damages by them ſuſtained on occaſion of the premiſes in the ſaid declaration mentioned; and this they are ready to verify; wherefore they pray judgment and their damages by them ſuſtained on occaſion of the ſaid premiſes, to be adjudged to them, &c.

It does not appear by the inſtructions when or by whom the bond in queſtion was paid, I have therefore drawn the replication very open, and perhaps uncommonly ſo; but I think it is ſufficiently certain to meet any objection.

V. Lawes.

Plea by executor, that teſtator *non aſſumpſit* to 1ſt, 2d, and laſt Counts, and as to the 3d Count, divers bonds in large ſums from teſtator to defendant himſelf, and *plene adminiſtravit præter* a certain ſum which he retains in part ſatisfaction.

BEVAN, EXECUTOR, &c. *at the ſuit of* MOFFATT. } AND the ſaid defendant, by A. B his attorney, comes and defends the wrong and injury, when, &c. and as to the firſt, ſecond, and laſt Counts in the ſaid declaration, ſays, that the ſaid J. B. teſtator, *non aſſumpſit*: And as to the 3d Count in the ſaid declaration mentioned, he the ſaid defendant ſays, that the ſaid plaintiff *actio non*; becauſe he ſaith that the ſaid J. B. the teſtator, in his lifetime, to wit, on the twenty-fifth day of March 1773, at London aforeſaid, in the pariſh and ward aforeſaid, by his certain writing-obligatory, ſealed with his ſeal, and the court of our lord the king now here ſhewn, the date whereof is the day and year laſt aforeſaid, and then and there made for a juſt and true debt, acknowledged himſelf to be held and firmly bound to the ſaid defendant in the ſum of ten thouſand pounds of lawful, &c. to be paid to the ſaid defendant when he the ſaid J. B. ſhould be thereunto required, with a condition thereto ſubſcribed, that if the ſaid J. B. his heirs, executors, or adminiſtrators, ſhould and did well and truly pay, or cauſe to be paid unto the ſaid defendant, his executors, adminiſtrators, or aſſigns, the full ſum of five thouſand pounds of good and lawful money of Great Britain, on or before the twenty-ſixth day of March 1774, together with lawful

lawful intereſt for the ſame, then that obligation to be void, or elſe to remain in full force and virtue; which writing-obligatory, at the time of the death of the ſaid J. B. was in full force and effect, not ſatisfied, diſcharged, or cancelled; and at the time of the death of the ſaid J. B. there was due to the ſaid defendant upon the ſaid writing-obligatory of the ſaid J. B. for principal and intereſt, the ſum of five thouſand and fifteen pounds five ſhillings. And the ſaid defendant further ſaith, that the ſaid J. B. in his lifetime, to wit, on the ſaid twenty-ſixth of March A. D. 1773, at, &c. aforeſaid, by his certain other writing-obligatory, ſealed, &c. [ſet out another bond as before] to the defendant on the penal ſum of twelve thouſand pounds, conditioned for the payment of ſix thouſand pounds on the twenty ſixth day of March 1776, upon which ſix thouſand and eighteen pounds eighteen ſhillings was due for principal and intereſt at teſtator's death: And the ſaid defendant further ſaith, that the ſaid J. B. in his lifetime, to wit, on the eighteenth of April 1773, at, &c. aforeſaid, made his laſt will and teſtament in writing, and thereby conſtituted and appointed the ſaid defendant executor thereof, and afterwards, to wit, on the day and year laſt aforeſaid, there died, without altering or revoking the ſame, after whoſe death the ſaid defendant there proved the ſaid will, and took upon himſelf the burthen of the execution thereof. And the ſaid defendant further ſaith, that he hath fully adminiſtered all and ſingular the goods and chattels, rights and credits, which were of the ſaid J. B. at the time of his death, which have come to the hands of the ſaid defendant to be adminiſtered; and that he hath not any goods or chattels which were of the ſaid J. B. at the time of his death in his hands to be adminiſtered, nor had any on the day of exhibiting, &c. or at any time ſince, except goods and chattels to the value of four thouſand one hundred and ſeventeen pounds two ſhillings and ſixpence, which were not ſufficient to ſatisfy and diſcharge the writing obligatory aforeſaid, or the money due thereon, and which he the ſaid defendant retains in his hands towards ſatisfaction thereof; and this, &c.; wherefore, &c. if, &c. F. BULLER.

Plene adminiſtravit by adminiſtrators.

AND the ſaid Thomas and Edward, by John W. their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid Catharine ought not to have or maintain her aforeſaid act. in thereof againſt them; becauſe they ſay that they have fully adminiſtered all the goods and chattels which were of the ſaid Sarah at the time of her death, which have come to their or either of their hands to be adminiſtered; and that they have not nor hath either of them any goods or chattels which were of the ſaid Sarah at the time of her death to be adminiſtered; nor had any on the day of exhibiting the bill of the ſaid Catharine, nor at any time afterwards; and this they are ready to verify; wherefore they pray judgment if the ſaid Catharine ought to have or maintain her aforeſaid action thereof againſt them, &c. W. BALDWIN.

ſon, ſo that ſuch defendant be and appear at the ſaid court, or at the then next court held or to be holden before the ſaid mayor and aldermen as aforeſaid, to anſwer ſuch plaintiff of and in the plea in ſuch his bill original ſpecified; and if ſuch ſerjeant at mace and miniſter of the ſame court, at the ſame or at the then next court, held or to be holden as aforeſaid, return and certify to the ſaid court, ſuch defendant to be attached by ſuch ſum of money ſo being in the hands and cuſtody of ſuch other perſon, and the ſame ſum in the hands and cuſtody of ſuch other perſon defendant, ſo that ſuch defendant in ſuch bill original named be and appear at ſuch ſame, or the then next court, held or to be holden as aforeſaid, to anſwer ſuch plaintiff in the plea in ſuch bill original ſpecified; and if ſuch defendants at that and three other courts from thence next ſeverally held or to be holden before the mayor and aldermen of the ſaid city as aforeſaid, that is to ſay, at four ſuch courts, be or hath been ſolemnly called and appears not, or hath not appeared, but makes or hath made default, and ſuch defaults, according to the cuſtom of the ſaid city, be recorded againſt ſuch perſon, defendant, after ſuch attachment made as aforeſaid, ſuch plaintiff in ſuch bill original named, at every ſuch four courts, in his proper perſon or by his attorney, appearing and offering himſelf againſt ſuch defendant in the plea in ſuch bill originally ſpecified, according to the cuſtom of the ſaid city, then, at the laſt of ſuch four courts, or at any court held or to be holden as aforeſaid, after ſuch four defaults recorded as aforeſaid, at the petition of ſuch plaintiff in ſuch bill original named made to the ſaid court, it is and hath been uſed for the ſaid court to command ſuch, or any other ſerjeant at mace and miniſter of the ſaid court, to warn ſuch other perſon, according to the cuſtom of the ſaid city, to be and appear at any court afterwards to be holden before the mayor and aldermen for the time being as aforeſaid, to ſhew if any thing he hath or know of to ſay for himſelf, why ſuch plaintiff in ſuch bill original named ought not to have execution of ſuch ſum ſo attached as aforeſaid; and if at ſuch court ſuch ſerjeant at mace return and certify to the ſame court, ſuch other perſon in whoſe hands ſuch ſum of money is or hath been attached as aforeſaid, to be warned acording to the cuſtom of the ſaid city, to be and appear at the ſame court to ſhew cauſe as aforeſaid, and if ſuch perſon ſo warned, being ſolemnly called at ſuch court, doth not appear or hath not appeared, but makes or hath made default, then it is, and time immemorial as aforeſaid hath been, uſed and accuſtomed for the ſaid court to award ſuch plaintiff to have execution of ſuch ſum ſo attached as aforeſaid, to ſatisfy ſuch plaintiff's debt on ſuch bill original ſpecified, or ſo much thereof as ſuch ſum ſo attached extends or hath extended to ſatisfy, by ſufficient pledges to be found and given by ſuch plaintiff in ſuch bill original named in the ſame court, according to the cuſtom of the ſame city, to reſtore to ſuch defendant ſuch ſum of money ſo attached as aforeſaid, if ſuch defendant, within [illegible] a day from thence next enſuing, come or hath come into the ſaid court holden as aforeſaid, and diſproves or hath diſproved, or avoided the ſaid debt in the ſaid bill original contained,

contained, according to the cuſtom of the ſaid city from time immemorial as aforeſaid uſed and approved, and that after ſuch pledges found and execution had of ſuch ſum ſo in the hands and cuſtody of ſuch other perſon attached and defended by the plaintiff in ſuch bill original named, ſuch other perſon, in whoſe hands or cuſtody ſuch ſum is or hath been attached as aforeſaid, is and hath been diſcharged againſt ſuch defendant of the ſaid ſum ſo attached and had in execution as aforeſaid; and ſuch defendant in ſuch original bill named, is and hath been diſcharged againſt ſuch plaintiff of ſuch money of his debt in ſuch bill original demanded by ſuch plaintiff, ſo long as ſuch judgment and execution remain in force and effect, not revoked nor diſproved by ſuch defendant; and if ſuch ſum of money ſo attached and defended and in execution, amounts not or hath not amounted to the whole ſum of the debt in and by the ſaid bill original demanded by ſuch plaintiff againſt ſuch defendant, then ſuch plaintiff, by the cuſtom of the ſaid court, is, and from time immemorial as aforeſaid hath been uſed and accuſtomed to have proceſs againſt ſuch defendant, according to the cuſtom of the ſaid city, for the reſidue of his ſaid debt, as by him in ſuch bill original demanded: And the ſaid Benjamin and John further ſay, that the ſaid cuſtom and all other cuſtoms of the ſaid city obtained and uſed in the ſame city, during all the time aforeſaid by authority of a parliament of Richard the Second, late king of England, &c. after the conqueſt holden at Weſtminſter in the ſeventh year of his reign, were ratified and confirmed to the then mayor and commonalty and citizens of the ſaid city and their ſucceſſors: And the ſaid Benjamin and John further ſay, that one Thomas Garner and Joſeph Aſhmore of London, merchants, before the day of exhibiting the bill of the ſaid Catharine, Agatha, and Johanna, to wit, on the [illegible] in the nineteenth year of the reign of his preſent majeſty, in their proper perſons, came into the king's majeſty's court, holden before Samuel Plumbe, eſquire, then mayor of the city of London, and the aldermen of the ſaid city, in the chamber of the Guildhall of the ſaid city of London, ſituate in the pariſh of St. Lawrence Jewry, in the ward of Cheap, London aforeſaid, according to the cuſtom of the ſaid city, and then and there in the ſame court, by the names of Thomas Garner and Joſeph Aſhmore, affirmed a certain bill original againſt the widow of Claſper Tamm and (a) Moller, in a plea of debt upon demand of ſix hundred pounds of lawful money of Great Britain, the tenor of which ſaid bill original follows in theſe words: that is to ſay, Thomas Garner and Joſeph Aſhmore, by William Naſh their attorney, demand againſt the widow of Claſper Tamm and Moller, ſix hundred pounds of lawful money of Great Britain, which they owe to and detain from the ſaid plaintiffs: For that on the fifteenth day of July, in the nineteenth year of the reign of our ſovereign lord George the third, at the pariſh of St. Helen, London, the ſaid defendants, for and in conſideration of divers ſums of money before that time due and owing from the ſaid defendants to the ſaid plaintiffs, and then in

Cuſtoms of London were confirmed by act of parliament of Richard 2d.

Defendants ſay, that one Thomas Garner and Joſeph Aſhmore, before the exhibiting of plaintiff's bill, came into the [illegible] of the [illegible]or and aldermen.

Affirmed a bill original againſt the widow of Claſper Tamm and Moller in debt for 600l.

Which bill follows in theſe words.

(a) One of the defendants in the original attachment.

arrear

arrear and unpaid, granted and agreed to pay to the ſaid plaintiff the ſaid ſix hundred pounds above demanded, when the ſame ſhould afterwards be demanded; yet notwithſtanding the defendants, although often requeſted, have not, nor have either of them yet paid to the ſaid plaintiffs, or either of them, the ſaid ſix hundred pounds above demanded, or any part thereof to the damage of the ſaid plaintiffs twenty ſhillings, and therefore they bring this ſuit, &c.: And the ſaid Thomas and Joſeph then and there in the ſame court, according to the cuſtom of the ſaid city, found pledges to proſecute their ſaid original bill, to wit, John Doe and Richard Roe, and then and there appointed in their ſtead, William Naſh, their attorney, againſt the ſaid widow of Claſper Tamm and Moller, in and upon the ſaid plea of the ſaid bill original, according to the cuſtom of the ſaid city, &c.; and by their ſaid attorney then and there alſo prayed proceſs to be thereupon made to them againſt the ſaid widow of Claſper Tamm and Moller, according to the cuſtom of the ſaid city, and it was then and there granted to them, &c. whereupon upon the petition of the ſaid Thomas and Joſeph made to the ſaid court by their ſaid attorney, and by virtue of the ſaid bill original, it was commanded by the ſaid court to one Leſtock Peacock, one of the ſaid ſerjeants at mace of the ſaid mayor and aldermen, and a miniſter of the ſaid court; that he, according to the cuſtom of the ſaid city, ſhould ſummon by good ſummoners the ſaid widow of Claſper Tamm and Moller, to be and appear at the ſame court holden before the ſaid mayor and aldermen as aforeſaid, on the ſaid ſixteenth day of July, in the ſaid nineteenth year of our ſovereign lord king George the third, to anſwer to the ſaid Thomas and Joſeph, of and in the plea in the ſaid original bill ſpecified; and that day was then and there given by the ſaid court to the ſaid Thomas and Joſeph in the ſame plea, &c. whereupon afterwards, to wit, on the ſame day at the ſame court the ſaid ſerjeant at mace, and miniſter of the ſame court, according to the cuſtom of the ſaid city returned and certified to the ſame court, that the ſaid widow of Claſper Tamm and Moller had nothing within the liberties of the ſaid city by which or whereby they could be ſummoned, nor were they, or was either of them to be found within the ſaid city; and thereupon the ſaid widow C. Tamm and Moller were then and there ſolemnly called, and did not, nor did either of them appear, but made default, and thereupon afterwards, to wit, on the ſame day at the ſame court, it was teſtified and notified to the ſame court by the ſame Thomas and Joſeph, that the ſaid Benjamin and John were then indebted to the ſaid widow of Claſper Tamm and Moller in the ſum of ſeventy-nine pounds and ninepence, which they in their hands and cuſtody there had, and from the ſaid widow of C. Tamm and Moller detained; and the ſaid Thomas and Joſeph then and there by their ſaid attorney prayed the ſaid court to command the ſaid ſerjeant at mace, and miniſter of the ſame court, according to the cuſtom of the ſaid city, to attach the ſaid widow of C. Tamm and Moller by the ſaid ſeventy-nine pounds and ninepence, then being in the hands and cuſtody of the ſaid Benjamin and

And ſaid Thomas and Joſeph found pledges.

Appointed their attorney and prayed proceſs

Precepts to one of the ſerjeants at mace to ſummon ſaid widow of C. Tamm and Moller.

To appear 16th July.

Same day given to the ſaid Thomas and Joſeph

Serjeant at mace returns nihil.

Widow of Claſ. Tamm and Moller called and made default.

Notified to ſame court that defendants were indebted to ſaid widow of Claſ. Tamm and Moller in 79l. 9d. which they had in their hand

and

and John, to defend according to the cuſtom of the ſaid city, ſo that the ſaid widow of Claſper Tamm and Moller might be at the then next court of his ſaid Majeſty, to be holden before the ſaid mayor and aldermen in the ſaid chamber of Guildhall of the ſaid city, according to the cuſtom of the ſame city, to anſwer to the ſaid Thomas and Joſeph of and in the plea in the ſaid original bill ſpecified; whereupon at the petition of the ſaid Thomas and Joſeph, by their attorney aforeſaid to the ſame court, it was commanded as aforeſaid by the ſame court to the ſaid ſerjeant at mace, and miniſter of the ſaid court, that he, according to the cuſtom of the ſaid city, ſhould attach the ſaid widow of Claſper Tamm and Moller by the ſaid ſeventy-nine pounds and ninepence, being in the hands and cuſtody of the ſaid Benjamin and John, ſhould defend according to the cuſtom of the aforeſaid city, ſo that the ſaid widow of C. Tamm and Moller might be at the next court of his ſaid majeſty, to be holden before the ſaid mayor and aldermen on the ſeventeenth day of July, in the ſaid nineteenth year of his ſaid preſent majeſty's reign, according to the cuſtom of the ſaid city, to anſwer to the ſaid Thomas and Joſeph of and in the plea in their ſaid bill original ſpecified; and that the ſaid ſerjeant at mace ſhould then certify to the ſaid court what he ſhould do by virtue of the ſaid precept, and the ſame day was then and there given by the ſame court to the ſaid Thomas and Joſeph in the ſaid plea, at which day, to wit, on the ſaid ſeventeenth day of July, in the ſaid nineteenth year of his ſaid preſent majeſty, at the ſaid next court of his ſaid majeſty, holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the ſaid city of London, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their ſaid attorney, came and appeared, &c.; and the ſaid ſerjeant at mace then and there returned and certified to the ſame court, that he, according to the cuſtom of the ſaid city, on the ſixteenth day of April, in the nineteenth year of the reign of his ſaid preſent majeſty, between the hours of and in the afternoon of the ſame day, by virtue of the ſaid precept had attached the ſaid widow of Claſper Tamm and Moller by the ſaid ſeventy-nine pounds and ninepence, then being in the hands and cuſtody of the ſaid Benjamin and John, according to the cuſtom of the ſaid city, and the ſaid ſeventy-nine pounds and ninepence ſo being in the hands and cuſtody of the ſaid Benjamin and John, and defended according to the cuſtom of the ſaid city, ſo that the ſaid widow of Claſper Tamm and Moller might be then and there at the ſame court, to anſwer to the ſaid Thomas and Joſeph of and in the plea in the ſaid original bill ſpecified as before commanded; whereupon in the ſame court of his ſaid majeſty then holden before the ſaid mayor and aldermen, in the ſaid chamber, at the Guildhall of the ſaid city, on the ſaid ſeventeenth day of April, in the ſaid nineteenth year of the reign of his preſent majeſty, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their ſaid attorney, offered themſelves againſt the ſaid widow of Claſper Tamm and Moller, in the ſaid plea in the ſaid original bill ſpecified,

Thomas and Joſeph prayed an attachment againſt widow of C. Tamm and Moller by ſaid 79l. 9d. to defend, and be at the then next court.

It was commanded ſaid ſerjeant, that he ſhould attach, &c.

To be at the next court on 17th July.

Same day given to ſaid Thomas and Joſeph.

Said ſerjeant at mace returned that he had attached, &c.

Whereupon the ſaid Thomas and Joſeph offered themſelves againſt ſaid widow of Claſper Tamm and Moller.

cified, according to the cuſtom of the ſaid city; and the ſaid widow of C. Tamm and Moller, at the petition of the ſaid Thomas and Joſeph, by their attorney, then and there made at the ſame court, were ſolemnly called but did not appear, but then and there made their firſt default, which ſaid default was recorded upon the ſaid widow of C. Tamm and Moller at that court, in the ſaid plea in the ſaid bill original ſpecified, according to the cuſtom of the ſaid city; and thereupon according to the cuſtom of the ſaid city, a day was then given by the ſaid court to the ſaid widow of C. Tamm and Moller, until the next court of his preſent majeſty, to be holden before the ſaid mayor and aldermen, in the ſaid chamber of the ſaid Guildhall of the ſaid city, on the nineteenth day of July, in the ſaid nineteenth year of the reign of his preſent majeſty, according to the cuſtom of the ſaid city; and the ſame day was then and there given by the ſaid court to the ſaid Thomas and Joſeph in the ſame plea, &c. at which ſaid next court of his ſaid majeſty, holden before the ſaid mayor and aldermen, in the ſame chamber of the Guildhall of the ſame city, on the ſaid nineteenth day of July, in the ſaid nineteenth year of the reign of his preſent majeſty, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their aforeſaid attorney, appeared; and then and there in the ſaid court offered themſelves againſt the widow of Claſper Tamm and Moller, of and in the ſaid plea in the ſaid original bill ſpecified, according to the cuſtom of the ſaid city; and the ſaid widow of Claſper Tamm and Moller, at the petition of the ſaid Thomas and Joſeph, and then and there made in the ſame court, were ſolemnly called but did not appear, but then and there made a ſecond default, which ſaid ſecond default was recorded upon the ſaid widow of C. Tamm and Moller at the ſame court, in the ſaid plea in the ſaid bill original ſpecified, according to the cuſtom of the ſaid city, a day was then and there given by the ſame court to the ſaid widow of Claſper Tamm and Moller until the next court of his preſent majeſty, to be holden before the ſaid mayor and aldermen in the ſaid chamber of the ſaid Guildhall of the ſaid city, on the twentieth day of July in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city: and the ſame day was then and there given by the ſaid court to the ſaid Thomas and Joſeph in the ſame plea, &c. at which ſaid next court of his ſaid preſent majeſty, holden before the ſaid mayor and aldermen, in the ſaid chamber of the Guildhall of the ſame city, on the ſaid twentieth day of July, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their ſaid attorney, appeared, and then and there in the ſame court offered themſelves againſt the ſaid widow of Claſper Tamm and Moller, in the ſaid plea in the ſaid original bill ſpecified, according to the cuſtom of the ſaid city; and the ſaid widow of Claſper Tamm and Moller, at the petition of the ſaid Thomas and Joſeph then and there made in the ſame court, were ſolemnly called and did not appear,

Widow of Claſ. Tamm and Moller made firſt default.

Day was given to ſaid widow of Claſ. Tamm and Moller until next court, 19th July.

Same day was given to ſaid Thomas and Joſeph.

Said Thomas and Joſeph appeared at the next court, and offered themſelves againſt ſaid widow of Claſper Tamm and Moller.

Said widow of Claſ. Tamm and Moller made ſecond default

Further day given until next court.

Same day given to ſaid Thomas and Joſeph.

Said T. and J. appeared at the then next court, and offered themſelves againſt ſaid widow of Claſper Tamm and Moller.

appear, but then and there made a third default, which ſaid third default was recorded upon the ſaid widow of Claſper Tamm and Moller at the ſame court, in the ſame plea in the ſaid bill original ſpecified according to the cuſtom of the ſaid city, a day was then and there given by the ſame court to the widow of the ſaid Claſper Tamm and Moller until the next court of his preſent majeſty, to be holden before the ſaid mayor and aldermen in the ſaid chamber of the ſaid Guildhall of the ſaid city, on the twenty-ſecond day of July, in the nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city, the ſame day was then and there given by the ſaid court to the ſaid Thomas and Joſeph, in the ſame plea, &c. at which ſaid next court of his ſaid majeſty, holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the ſame city, on the ſaid twenty-ſecond day of July, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, according to the cuſtom of the ſaid city, the ſaid Thomas and Joſeph, by their ſaid attorney, appeared, and then and there in the ſame court offered themſelves againſt the ſaid widow of Claſper Tamm and Moller, of and in the ſaid plea in the ſaid original bill ſpecified, according to the cuſtom of the ſaid city, and the ſaid widow of C. Tamm and Meller, at the petition of the ſaid Thomas and Joſeph then and there made in the ſame court, were ſolemnly called and did not appear, but then and there made a fourth default, which ſaid fourth default was recorded upon the ſaid widow of Claſper Tamm and Moller at the ſame court, in the ſaid plea in the ſaid bill original ſpecified, according to the cuſtom of the ſaid city in form aforeſaid, to wit, at the court of the ſaid lord the king, holden before the ſaid mayor and aldermen in the ſaid chamber in the Guildhall of the ſaid city, the twenty-ſecond day of July, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, at the petition of the ſaid Thomas and Joſeph made to the ſaid court, by their ſaid attorney, it was then and there by the ſame court commanded to the ſaid ſerjeant at mace, that he, according to the cuſtom of the ſaid city, ſhould warn and make known to the ſaid Benjamin and John to be and appear in the ſaid court to be holden before the ſaid mayor and aldermen, in the ſaid chamber of the Guildhall of the ſaid city, on Monday the eleventh day of October, in the nineteenth year of the reign of our ſovereign lord king George the third, at in the forenoon, according to the cuſtom of the ſaid city, to ſhew cauſe, if any thing they had, why the ſaid Thomas and Joſeph ſhould not have execution againſt them for the ſaid ſum of ſeventy-nine pounds and ninepence, in monies numbered theretofore attached in their hands as the proper monies of the ſaid widow of Claſper Tamm and Moller; and that the ſaid ſerjeant at mace ſhould then certify to the ſame court what he ſhould do by virtue of the ſaid precept, and the ſame day was then and there given by the ſame court to the ſaid Thomas and Joſeph, to be there, &c. on which ſaid day at the court of the ſaid lord the king, holden before the ſaid mayor and aldermen, in the ſaid chamber of the ſaid Guildhall of the ſaid city, accord-

ing

Said widow of C. Tamm and Moller made a third default.

Further day given until the next court.

Same day given to ſaid Thomas and Joſeph.

Thomas and Joſeph appeared at the then next court, and offered themſelves againſt ſaid widow of Claſper Tamm and Moller.

Widow of Claſ. Tamm and Moller made a fourth default.

Scire facias to defendants to ſhew cauſe why ſaid Thomas and Joſeph ſhould not have execution of ſaid 79l. 9d. theretofore attached in their hands.

ing to the cuſtom of the ſaid city, on the ſaid eleventh day of October, in the nineteenth year of the reign of the ſaid lord the preſent king, the ſaid Thomas and Joſeph, by their ſaid attorney, came and appeared; and the ſaid ſerjeant at mace then returned and certified to the ſaid court, that he, by virtue of the ſaid precept to him directed, had warned and made known to the ſaid Benjamin and John to be and appear in the ſaid court, there to be holden, &c. to ſhew cauſe as to him above was commanded; whereupon at the petition of the ſaid Thomas and Joſeph, made to the ſaid court by their ſaid attorney, the ſaid Benjamin and John were then and there ſo ſolemnly demanded, and did not appear, but made default, and thereupon the ſaid Thomas and Joſeph, by their ſaid attorney, then and there in the ſame court, according to the cuſtom of the ſaid city, prayed execution of the ſeventy-nine pounds and ninepence, ſo attached in the hands and cuſtody of the ſaid Benjamin and John as aforeſaid, to be adjudged to them according to the cuſtom of the ſaid city, &c.; therefore on the ſaid eleventh day of October, in the ſaid nineteenth year of the reign of his ſaid preſent majeſty, at the ſame court, and there held according to the cuſtom of the ſaid city, it was conſidered by the ſame court that the ſaid Thomas and Joſeph ſhould have execution of the ſaid ſeventy-nine pounds and ninepence, in moneys [illegible] attached as aforeſaid by two ſufficient pledges to be found and given by them the ſaid Thomas and Joſeph in the ſame court, according to the cuſtom of the ſaid city to reſtore to ſaid widow of Claſper Tamm and Moller within one year and one day then next enſuing, according to the cuſtom of the ſaid city, ſhould come into the ſaid court and diſprove or avoid the ſaid debt, in and by the ſaid original bill of the ſaid Thomas and Joſeph demanded, and that the ſaid Thomas and Joſeph ſhould have proceſs againſt the ſaid widow of Claſper Tamm and Moller for the reſidue of the ſaid debt in the ſaid bill original ſpecified, &c. And thereupon the ſaid Thomas and Joſeph at that court holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the city, on the eleventh day of October, in the ſaid year of the reign of his ſaid preſent majeſty, according to the tenor of the ſaid judgment, and the cuſtom of the ſaid city, found ſufficient pledges, to wit, Thomas Taylor, and George Midlane, citizens of the ſaid city, to reſtore to the ſaid widow of Claſper Tamm and Moller the ſaid ſeventy-nine pounds and ninepence ſo attached as aforeſaid, if the ſaid widow of Claſper Tamm and Moller ſhould, within a year and a day then next coming, come into the ſaid court and diſprove or avoid the ſaid debt in and by the ſaid bill original demanded, according to the cuſtom of the ſaid city, and thereupon the ſaid Thomas Garnor and Joſeph in the ſame court, and by the conſideration of the ſame court, according to the tenor of the ſaid judgment, and the cuſtom of the ſaid city, had execution for the ſaid ſeventy-nine pounds and ninepence ſo attached as aforeſaid, and thereof in the ſame court acknowledged to be ſatisfied, &c. as by the record and proceſs thereof remaining in his ſaid majeſty's court,

Serjeant at mace returned *ſcire facias*.

Defendant did not appear, but made default.

Thomas and Joſeph prayed execution.

Judgment that ſaid Thomas and Joſeph ſhould have execution of ſaid 79l. 9d by two ſufficient pledges to reſtore ſame.

And that ſaid Thomas and Joſeph ſhould have proceſs againſt ſaid widow of Claſper Tamm and Moller for the reſidue.

Said Thomas and Joſeph found ſufficient pledges to re-, &c.

And ſaid Thomas and Joſeph had execution for ſaid 79l. 9d. ſo attached, &c.

As by the record, &c.

court, holden before the ſaid mayor and aldermen in the ſaid chamber of the Guildhall of the ſaid city more fully appears; and the ſaid Benjamin and John farther in fact ſay, that the ſaid ſeventy-nine pounds and ninepence ſo attached in their hands, and in execution had at the ſuit of the ſaid T. Garner and Joſeph, according to the cuſtom of the ſaid city, and the ſaid ſeventy-nine pounds and ninepence, parcel of the ſaid ſeveral ſums of money in the ſaid ſeveral promiſes and undertakings in the ſaid declaration of the ſaid Catharine Agatha Tamm widow, Johanna Berend Moller above mentioned, are one and the ſame ſum of money, and not other or different ſums; and the ſaid Benjamin and John, in the ſaid original bill and attachment, and the ſaid Benjamin and John in the ſaid declaration above-named, are the ſame perſons and not other or different perſons; and alſo, that the ſaid widow of Claſper Tamm and Moller, named defendants in the ſaid original bill proſecuted at the ſuit of the ſaid Thomas Garner and Joſeph, and the ſaid Catharine Agatha Tamm, widow, and Johanna Berend Moller, named plaintiffs in the above declaration, are the ſame perſons, and not other or different, and that the ſaid judgment and execution ſtill remain in full force and effect, in nowiſe diſproved or revoked by the ſaid Catharine Agatha Tamm widow, and Johanna Berend Moller, and this the ſaid Benjamin and John are ready to verify: wherefore they pray judgment if the ſaid Catharine Agatha Tamm widow, and Johanna Berend Moller, ought to have their aforeſaid action thereof maintained againſt them, &c.

THO. DAVENPORT.

Said 79l. 9d. attached, and ſaid 79l. 9d. parcel of ſaid ſeveral ſums in ſaid ſeveral promiſes mentioned are the ſame.

Said Benjamin and John in ſaid original bill and attachment and ſaid defendants are ſame perſons.

Said judgment and execution ſtill remain in full force.

See Law 995 6th 3 Wilſ 297 Black 3 4 3 Inſt. 23. Latch 168. Priv Lond. 213. Moore, 570. Str 641.

See Vol. II. p. 162, Cuſtom of London ſet out, in a declaration where goods had been attached in the hands of a garniſhee.

Hilary Term, 37. Geo. 3.

ALIEN *at the ſuit of* ANNIS, Executor.

} And the ſaid James comes and defends the wrong and injury, when, &c. and ſays, that he did not and doth make and promiſe in manner and form as the ſaid John, executor aforeſaid, hath above thereof complained againſt him: and of this he puts himſelf upon the country, &c. And for further plea in this behalf the ſaid James, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt the ſaid James, becauſe he ſays, that the ſaid Nicholas Louis, the teſtator in the ſaid declarations mentioned, before and at the time of the making of the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, was an alien enemy born in parts beyond the ſeas, to wit, in the iſland of St. Domingo in the Weſt Indies, under the dominion of, and ſubject to the perſons exerciſing the powers of government in France, enemies to our ſovereign lord the now king of Great Britain, and born of parents adherents to the enemies of our ſaid ſovereign lord the now king; and that the ſaid Nicholas Louis came here into England without the ſafe conduct of

Plea that plaintiff is an alien enemy, and a priſoner of war taken fighting on the ſide of perſons exerciſing the power and government of France.

of our ſaid lord the king, to wit, at London aforeſaid in the pariſh and ward aforeſaid; and this he the ſaid James is ready to verify: wherefore he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.: And for further plea in this behalf he the ſaid James, by like leave of the court here for this purpoſe firſt granted, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt the ſaid James, becauſe he ſays, that long before, and at the time of making the ſaid ſeveral ſuppoſed promiſes and undertakings in the ſaid declaration mentioned, there was and yet is open war between our ſaid lord the king and the perſons exerciſing the powers of government in France, in which war the ſaid Nicholas Louis before the making of the ſaid ſeveral ſuppoſed promiſes and undertakings, or of any of them, to wit, on the thirtieth day of July in the year of our lord 1794, at and in parts beyond the ſeas, to wit, at Guadaloupe in the Weſt Indies, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid, was taken priſoner at war, fighting on the ſide of the perſons exerciſing the powers of government in France againſt the forces of our ſaid lord the king, by certain of the ſaid forces of our ſaid lord the king; and the ſaid Nicholas Louis, being ſo taken priſoner, was afterwards ſent priſoner of war to England without the ſafe-conduct of our ſaid lord the king: And the ſaid James further ſays, that the ſaid Nicholas Louis ſo remained and continued ſuch priſoner of war to our ſaid lord the king continually from the time of ſuch his captivity at the time of making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, and to the day of his death, to wit, at London aforeſaid in the pariſh and ward aforeſaid; and this he the ſaid James is ready to verify: wherefore he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him,

THO. BARROW.

Vide Wills againſt Williams, 1. Ld. Raym. 282.

Replication, came to England under the ſafe conduct and under the licence and protection of the king of Great Britain.

And the ſaid John, as to the ſaid plea of the ſaid James by him firſt above pleaded, and whereof he hath put himſelf upon the country, doth ſo likewiſe; and as to the plea of the ſaid James by him ſecondly above pleaded, the ſaid John ſays, that he, as executor as aforeſaid, by reaſon of any thing by the ſaid James above in that behalf alledged, ought not to be barred from having and maintaining his aforeſaid action thereof againſt him, becauſe he ſays, that true it is that the ſaid Nicholas Louis, the teſtator in the ſaid declaration mentioned, was an alien born in parts beyond the ſeas, to wit, in the ſaid place in the ſaid plea in that behalf mentioned, under the dominion of and ſubject to the perſons exerciſing the powers of government in France, and born of parents adherents to the enemies of our ſaid lord the king for replication, nevertheleſs in this behalf the ſaid John ſays, that the ſaid Nicholas Louis, in his lifetime, before and at the time of making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned,

tioned, and from thence until the time of the death of the said Nicholas, was living by the licence of our sovereign lord the now king, under the government and protection of our said lord the king, and came to England under the safe conduct of our said lord the king, to wit, at London aforesaid in the parish and ward aforesaid; and this he the said John is ready to verify: wherefore he prays judgment of his damages by reason of the non-performance of the said several promises and undertakings above-mentioned to be adjudged to him, &c.: And as to the plea of the said James by him lastly above pleaded, the said John says, that he, by reason of any thing by the said James above in that plea alledged, ought not, as executor as aforesaid, to be barred from having and maintaining his aforesaid action thereof against the said James, because he says, that true it is that before and at the time of making the said several promises and undertakings in the said declaration, there was and yet is open war between our said lord the king and the persons exercising the powers of government in France for replication nevertheless in this behalf the said John says, that the said Nicholas Louis, in his lifetime, and before the making of the said several promises and undertakings in the said declaration mentioned, was under the protection of our sovereign lord the now king, and came to England under the safe conduct of our said lord the king, and from thence to the time of his was in this kingdom, by the licence, and under the protection of our said lord the king, to wit, at London aforesaid in the parish and ward aforesaid; without this, that the said Nicholas Louis, before the making of the said several promises and undertakings, or at any time after, was taken prisoner fighting on the side of the persons exercising the powers of government in France, against the of our said lord the king, by certain of the said forces of our said lord the king, and that the said Nicholas remained and continued prisoner of war to our said lord the king continually from the time of making the said several promises and undertakings in the said declaration mentioned, to the day of the death of him the said Nicholas Louis, or during any part of that time; and this the said John is ready to verify: wherefore he prays judgment and his damages, by reason of the non-performance of the said several promises and undertakings above-mentioned, to be adjudged to him, &c.

ANNEN *at the suit of* ANNIS, EXECUTOR. } If And the said James, as to the plea of the said John by him above pleaded by way of reply to the said plea of the said James by him secondly above pleaded in bar, says, that the said Nicholas Louis, in his lifetime, before and at the time of making the said several supposed promises and undertakings in the said declaration mentioned, and from thence until the time of his death, was not living under the licence of our sovereign lord the king, under the government and protection of our said lord the king, and did not come to England under the safe conduct of our said lord the king, in manner and form as the said John hath a

Rejoinder, did not come to England under the safe conduct, &c.

in his said replication in that behalf alledged; and of this he the said James puts himself upon the country, &c.: And he the said James, as to the said plea of the said John by him above pleaded, by way of reply to the said plea of the said James by him lastly above pleaded in bar as before, says, that the said Nicholas Louis, before the making of the said several supposed promises and undertakings, was taken prisoner fighting on the side of the persons exercising the powers of government against the laws of our said lord the king, by certain of the said forces of our said lord the king, and that the said Nicholas remained and continued a prisoner of war to our said lord the king continually from the making of the said several supposed promises and undertakings in the said declaration mentioned till the day of his death; and this he the said James puts himself upon the country, &c. and the said John doth the like: therefore, as well to try this issue as the said other issue above joined between the said parties, let a jury come before our lord the king at Westminster, on next after , by whom, &c.; and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c. THO. BARROW.

Venire.

(a) Court of conscience act for Westminster, 23. Geo. 2. c. 27. s. 8. pleaded.

ACTIO NON; because he saith that the said plaintiff commenced his said action in the said court of our said lord the king, before the king himself here, against the said defendant after the first day of May, A. D. 1750, mentioned in a certain act of parliament made in the twenty-third year of the reign of our late sovereign lord George the Second, late king of Great Britain, &c. intituled, "An Act for the more easy and speedy Recovery of small Debts within the City and Liberty of Westminster and that part of the Duchy of Lancaster which adjoineth thereto," and that the said defendant, at the time of the commencement of the said action, was an inhabitant and resident within the said city and liberty of Westminster, and was by the said act liable to be warned and summoned before the court of requests in the said act mentioned and directed to be holden for the said city and liberty of Westminster and that part of the duchy of Lancaster which adjoineth thereto: And the said defendant further saith, that he was not at the time of the commencement of the said action as aforesaid, indebted to the said plaintiff in any sum or sums of money amounting to the sum of forty shillings; and this, &c., wherefore, &c.

R. DRAPER.

(a) Court of Requests Act for Westminster must be pleaded, Taylor v. Blair, 3. T. R. 452.

Replication to the last plea, that defendant was indebted in 40s. and upwards.

Precludi non; because, protesting as to the sufficiency of the plea; for replication in this behalf the said plaintiff saith, that the said defendant, at the time of the commencing of the said action, was and still is indebted to the said plaintiff by reason of the several promises and undertakings aforesaid, in the sum of forty shillings and upwards, to wit, at Westminster aforesaid; and this he prays may be enquired of by the country, &c.

Drawn by MR. WARREN.

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Plea of foreign attachment in the city of London, ſtating the cuſtom, - - - - - 2. H. B. C. Rep. 362

Plea of *non aſſumpſit* to part, and a foreign attachment in London as to the reſidue. Replication that the bonds attached were made in S. and not within London. Rejoinder, that one of the bonds was made in London; and judgment for the plaintiff, *Lew. Ent.* 2.

6. Judgment recovered.

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150. Plea of judgment recovered. Replication and *new*
151. *aſſignment*, admitting the judgment, but that this action
153. was brought for a different cauſe. PLEA to the new aſſignment; 1ſt, nonage; 2d, ſet-off (*See* ſet-off, *poſt.* 163.

146. Plea to *aſſumpſit* in B. R. of judgment recovered in C. B. in the ſame cauſe of the ſame term, with declaration.

147. REPLICATION *nul tiel* record. Rejoinder.

145. Plea, by adminiſtratrix, of judgment recovered in C. B. by plaintiff's *baron* and *feme*.

146.148. Judgment recovered in C. B. to action in B. R. and replication.

148. Plea of judgment recovered to an action in C. B. Re-
9. plication.

Vol. III. Page		Precedents in Books of Practice, Reporters, &c.
149,150.	Plea of judgment recovered in C. B. Replication *nul tiel* record. Rejoinder.	
150.	Plea of judgment recovered.	
146.	Replication to a plea of *nul tiel* record, in B. R. record in the ſame court.	
	Plea to an action in B. R. of judgment recovered in C. B. Replication thereto, - - -	Mor. Pr. 252, 253
	Plea to an action in C. B. a judgment recovered in B. R. -	*Ibid.* 253
	Judgment recovered in another action pleaded in bar to an action of *aſſumpſit*. Replication and rejoinder, -	1. R. P. C. B. 205
	Plea of recovery in a former action. Replication *nul tiel* record. Rejoinder *habetur tale recordum*, -	2. R. P. C. B. 19, 20
	Plea of a recovery in another action, - -	2. R. P. C. B. 20

7. Outlawry.

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241.	Plea (to declaration on a bill of exchange, drawer *v.* acceptors, partners, are outlawed), after ſeveral imparlances; 1ſt, *nul tiel* record of outlawry; 2d, that the other defendant reſided in Spain, and that Cornwall is the next Engliſh county; and traverſes that London is. Replication that there is ſuch a re-	
242,243.	cord, ſetting forth the original writ. Demurrer to the replication. Joinder.	

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154.	Plea of outlawry in C. B. to an action in B. R.	
153.	Plea of outlawry.	
	Plea, that defendant is outlawed in another court. Replication *nul tiel* record. - - -	1. R. P. C. B. 207, 208
	Plea of outlawry in plaintiff. Replication,	2. R. P. C. B. 23
	Plea of outlawry in bar. Replication *nul tiel* record, -	Morg. Pr. 224, 225

8. Payment. (*See* Accord and Satisfaction.)

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358,	Plea to declaration in *aſſumpſit* on a promiſſory note; 1ſt, *non aſſumpſit*; 2d, *payment* and *acceptance* of a groſs ſum in ſatisfaction; 3d, that defendants with a ſurety gave a promiſſory note to plaintiffs for a ſum in groſs, in *ſatisfaction*, which plaintiff accepted as ſuch, and which was duly paid. Replication to the	
360.	ſecond plea, proteſting that defendant did not pay the money therein mentioned in ſatisfaction for replication, ſays, that plaintiffs did not ſo receive it,	

Plea

Vol. III. Pag. 154. Plea (to declaration in *assumpsit* for work and labour as a builder, and repairing premises), that defendant did employ plaintiff, but that plaintiff employed one A. B. as his deputy, to superintend the works, and that defendant, according to the directions of plaintiff, *paid* A. B. the money for the work.

PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.

Plea to , on articles of agreement to pay a sum of money when the work should be finished; plaintiff only finished part, for which defendant *paid* him, - - Lill. Ent. 449

Plea that he had *paid* the money according to his promise. Replication that he had not paid, *Mo. Ent.* 29. 2. *Bro.* 6.

Plea, confesses the promise, but for defence, *payment* on, and acceptance *after the last continuance*, *Clift.* 203.

Plea that defendant paid the plaintiff ten pounds in full satisfaction of all debts and demands, which plaintiff received, and traverses any promise made afterwards. Replication that he had not paid, and a promise afterwards, *Bro. R.* 93.

Plea that defendant had paid his moiety of the bargain between him and plaintiff, for goods bought by them jointly, according to his promise. Replication that he had not paid, and issue thereupon, *Re. Dec.* 50.

Plea, payment of five shillings to several promises, in full satisfaction of all promises from beginning of the world to that day, *Bro. Vad.* 93.

Plea that one D. L. being indebted to defendant in twenty pounds, *paid* the same to plaintiff's mother by the plaintiff's direction. Replication. Demurrer and judgment for the plaintiff, *Bro. Vad.* 97.

Plea to first, second, and third promises, *non assumpsit*; and to the other payment according to his promise, *Bro. Va. Me.* 99. Replication that he had not paid; and issue, *Clift.* 102.

Non assumpsit to 1st, plea to 2d, that he *paid* so much money, and gave so many goods in satisfaction, *Hans.* 64.

Plea of payment in full satisfaction, *Cl. Ass.* 91.

Plea by one defendant, that he, together with another, *non assumpserunt* by the other, that the plaintiff appointed one P. B. to receive thirty pounds in full satisfaction, *Cl. Ass.* 138.

Payment, plea of, 3. *Brownl.* 82. *Hern.* 130, 135. at several times, 3. *Brownl.* 56.

Plea to first promise, payment to second; accceptance of another note in satisfaction, *Lill. Ent.* 121.

Plea in a feigned issue to first promise, that defendant had paid more than he received; to second, that intestate was not indebted to plaintiff, *Lill. Ent.* 48. 66.

Plea, *payment* for two of the oxen sold, and was ready to have paid for the cow if plaintiff would have delivered her; traversing that plaintiff offered to deliver the cow. Replication, protesting, &c. Plea that he offered to deliver, &c. *Br. Ref.* 93. 3. *Instr. Cl.* 270.

Plea, payment of part, and would have paid the rest if plaintiff would deliver the cattle to him according to his contract. Replication, protesting he had not paid for; plea, that he offered to deliver; and issue, *Bro. Va. Me.* 107.

Plea to action for money had and received, confessing the declaration that he had paid the several sums to W to the use of plaintiff. Replication and issue, 2. *Bro.* 6.

Plea of *payment* and acceptance (in *assumpsit*, for the occupation of third part of certain lands. Replication and issue, *Bro. Va. Me.* 92.

Plea,

Plea, proteſting that he made no ſuch promiſe, and for plea, payment of all weekly aſſeſſments and payments whatſoever, chargeable on certain tenements. Replication and iſſue, *Bro. Va. Me.* 107.

Plea of payment in diſcharge for ploughing, &c. Replication, proteſting, &c. for plea, did not receive it in full *ſatisfaction*; and iſſue, *Ibid.* 110.

Plea to *aſſumpſit*; *non aſſumpſit*, 2. *Brownl.* 8.; and that defendant *paid* all the ſums for proſecuting, and monies expended. Replication that he had not paid; and iſſue, *Ro. Ent.* 56.

Plea, that he paid plaintiff forty ſhillings, which was as much as he owed him; and a traverſe of the promiſe. Replication, proteſting that he had not paid. 1ſt plea, that he promiſed *in modo et formâ*; and iſſue, *Bro. Va. Me.* 108.

Plea (*to aſſumpſit on an indemnity*), that he become bound with the plaintiff to the ſheriff; who, in default of the appearance of the plaintiff, proceeded to an exigent againſt the bail and his plaintiff in C. B. and defendant received the monies to give her attorney, to ſuperſede the exigent, and for his journies and expences; and traverſes the promiſe to indemnify plaintiff; with iſſue on the traverſe, *Ro. Ent.* 63.

Plea that plaintiff was not *damnified* to *aſſumpſit* on indemnity, *Hanſ.* 118.

Plea (to *aſſumpſit* to marry), that he offered plaintiff, but ſhe refuſed, *Bro. Va. Me.* 90. Replication, iſſue, and rejoinder.

Plea (to *aſſumpſit* on a bill of exchange), proteſting, &c. for plea that he drew the bill for the uſe of C. who being indebted to the king in two hundred pounds, the bill was ſeized into the king's hands; and defendant, by virtue of a writ of extent, *paid* the money in full *ſatisfaction*; with proper averments and demurrer thereto, 2. *Vent.* 300.

Plea (to *aſſumpſit* on bill of exchange), as to ſecond promiſe, *non aſſumpſit*; to firſt, that plaintiff indorſed the bill to one A. B. and defendant *paid* the money to A. B. who gave a receipt for it, *Cluſt.* 928.

Plea of payment, 3. *Brownl.* 82. *Herne*, 130, 135.

Plea to one promiſe, that he paid the money to plaintiff on requeſt; and to the other promiſes, on the feaſt days, according to the feaſt-day. Replication and iſſue, 3. *Brownl.* 56.

Plea that he *paid* plaintiff, an *attorney*, the money due to him for fees, expences, and coſts. Replication and iſſue, *Hern.* 197.

9. Performance.

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155. Plea of performance to a Count in *aſſumpſit* to make repairs.

10. Releaſe.

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Plea of releaſe in an action of *aſſumpſit*. Replication taking iſſue on the execution, - - - - -	2. R. P. C. B. 70
Plea, a general releaſe. REPLICATION, dureſs of impriſonment. REJOINDER, - - - - -	*Ibid.* 71
Plea of a releaſe, *puis darrien continuance*, - -	Bull. N. P. 310
Plea of releaſe, - - - - - -	2. Ld. Raym. 1306

Vol. III. Page.		Precedents, Books of Practice, Reports, &c.
156.	Plea that the promiſes were made by the d[illegible] it, not by the defendants alone and that plaintiff executed a releaſe to defendant[illegible] Replicatio[illegible] piſes; and *non eſt factum* to the rele[illegible] Plea to *aſſumpſit* by *executors*, that teſtator ſold to plaintiff a cow for ſeven pounds; which, at the time of his death, was unpaid, and that pl[illegible] agreed to *releaſe* each other on cond[illegible] paying plaintiff thirteen pounds.	
	Plea, a general releaſe. Replication, *non eſt factum*,	2. R. P. B. R. 57
	Plea, general releaſe. Replication, dureſs of impriſonment. Rejoinder, not impriſoned, - -	*Ibid.* 58, 59, 60
	Plea of a general releaſe. Replication that defendant, being intoxicated with liquor, ſealed and delivered the releaſe. Rejoinder, - - -	Mor. Pr. 237, 238, 240
	Replication to the plea of a plea of general releaſe, *non eſt factum*, - - - - -	*Ibid.* 240
	Plea of releaſe to a declaration for lodging, *Cl. Aſſ.* 2[illegible]	
	Plea of general releaſe made *after verdict, and before judgment*, *Bro. Vad.* 115.	
	Plea to firſt, ſecond, and third promiſe, that he made them on the tenth of April, and that plaintiff ſealed a general releaſe to him on the eleventh; traverſing the promiſe afterwards. Replication that defendant promiſed after the tenth; and iſſue, *Bro. Vad.* 98, 105, 111.	
	Plea of *payment* before original ſued out, and plaintiff gave a releaſe thereupon, *Cl. Aſſ.* 129.	
	Plea to part *payment*, purſuant to the *award* to reſidue a *releaſe*. Replication, did not pay; and iſſue, *Mo. Ent.* 57.; proteſting arbitrators made no award for plea, no award was delivered, or ready to be delivered, according to the ſubmiſſion.	
	Replication that the award was made, and ready to be delivered under the hand and ſeal of the creditor; and iſſue, 58.	
	Plea (to *aſſumpſit* to pay money in conſideration of marriage), that plaintiff, after the promiſe made, diſcharged defendant by *releaſe* in writing. Replication, *non eſt factum*; and iſſue, *Hanſ.* 43.	

11. Satisfaction. (*See* Accord and Satisfaction, and Payment Pleas of, *ante*.)

12. Set-off. (*See* Notices, practical forms.)

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160.	Plea of ſet off for work and labour, &c. as a *ſaver*.	
159. 166.	Plea of ſet off, work and labour, &c. done by defendant.	
164.	Plea of ſet-off, for work, &c. neceſſaries, damages, goods, money lent, laid out, had and received, account ſtated. Replication thereto	

Vol. III. Page.		PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
[illegible]	Plea [illegible] issue and notice of set-off of a promissory note for one hundred pounds [illegible]	
[illegible]	Plea [illegible], work and labour, [illegible] and received, account stated. REPLI[illegible] taking issue on the set-off.	
[illegible]	157. Plea of set-off.	
[illegible]	[illegible] *set-off*	
[illegible]	[illegible] *ance* entered into by plaintiff to defendant in another Court by way of set off.	
	160. Plea of [illegible] on judgment by way of set off. Replication, [illegible] since the recovery thereof, and plea pleaded, defendant levied the sum due upon it.	
	162. Replication nulla tiel record to the plea, of payment of the judgment since plea pleaded; and opinion.	
	163. Plea to the assignment in a replication; 1st, *non assignavit*; 2d, set off. (*See* replication to plea of judgment recovered, *ante* 153, and index, ix.)	
	165. Plea of set off, money due on a judgment recovered by him against plaintiff, as *administrator*. (*See* executors, *post*.) [illegible]	
	166. Plea of *non assumpsit* to all the Courts, except two pounds eleven shillings *tender* to that, and with leave of the Court, a set-off to all the money except two pounds eleven shillings tendered. (*See* Tender, *post*.)	
Plea of set-off, - - - -		2. R. P. C. B. 25, *Ibid.* 62
Plea, setting off several sums against plaintiff's demands, -		
Plea of *non assumpsit* and set-off. REPLICATION that plaintiff was not nor is indebted, &c. - - -		Mor. Pl. 250, 251
Plea of set-off of a bond from a bankrupt to defendant, to an action brought by the assignees, - - - -		1. Will. Rep. 155
Plea to *assumpsit* for work and labour, &c. as an *attorney*, that plaintiff, before and at the time of the plea pleaded, was indebted to defendant in a larger sum. REPLICATION that defendant brought an action against plaintiff for the same time in which plaintiff has paid the amount of the demand into Court, - - - - -		3. T. R. 186
Plea to *assumpsit* for work and labour, that plaintiff entered into a bond to defendant to perform work within a certain time, and beyond that time it was conditioned that plaintiff should pay defendant ten pounds every week that the said work remained unfinished, and that four weeks had elapsed, and that forty pounds were due and owing to defendant, - - - -		2. T. R. 31
Plea of set off of bonds of indemnity, to an action for goods sold and delivered by *assignees of a bankrupt*, and that the monies paid on the bonds exceeded plaintiff's demand, -		5. T. R. 133
Plea of set-off of a judgment recovered. REPLICATION that plaintiff was then in the custody at the suit of defendant, and was by him discharged from the execution upon the judgment. REJOINDER that plaintiff executed a warrant		

rant of attorney to ſecure an annuity, which was ſet aſide for irregularity.

Plea of ſet-off to declaration on an award, confeſſing the award, but that before the making the award, plaintiff was indebted to defendant in other ſums of money, that he requeſted the arbitrator to make an allowance of his ſaid debt, but that he made the award without taking into conſideration defendant's debt.

13. Tender.

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183. Plea to all the promiſes (except the third), for money had and received, and all the money therein except ten ſhillings and ſixpence depoſit, *non aſſumpſit* and iſſue; and as to that ten ſhillings and ſixpence, the
184. depoſit a tender; ſecond, as to firſt and ſecond Counts, that plaintiff exonerated defendant from the performance thereof.

177. REPLICATION to plea of tender, admitting the tender, and taking money out of court.

180. Replication of a ſubſequent demand and refuſal. Rejoinder thereto, and iſſue.

166. Plea of *non aſſumpſit* to all the Counts except two pounds eleven ſhillings; tender to that, and with leave of the Court a *ſet-off* to all the money except two pounds eleven ſhillings tendered. (*See* Set-off, *ante.*)

173. Plea of tender of thirty pounds, to an action brought on an agreement to repair the vicarage-houſe, by a clergyman.

181. Plea to part judgment againſt defendant, having neglected to plead as to part of a particular Count, plaintiff takes judgment by *nil dicit* as to that, in order
182. to prevent a diſcontinuance, *unica taxatio.* REPLICATION to the plea of tender pleaded to a *quantum meruit*, admitting the tender, ſays, that plaintiff deſerved to have more than the ſum tendered, to wit, &c. pounds award of *venire.*

182. Plea of tender to the laſt Count of fifteen guineas, ac-
183. ceptance of the fifteen guineas, and *venire* awarded to try the other iſſue.

183. Replication to a plea of tender, that no ſuch tender was ever made.

174. [illegible] plaintiff takes money out of court; and [illegible] remainder.

176. Plea of *non aſſumpſit* to part, and tender to the reſidue.

176. [illegible] the tender.

180. [illegible] plea of tender, a bill of [illegible] with circumſtances before the making any tender.

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181.	Plea first, general iſſue; ſecond, plea of tender.	
171.	Plea (to declaration for money had and received, and account ſtated), as to all the promiſes, &c. except as to one guinea, parcel, &c. *non aſſumpſit*, and to the guinea, a tender.	
179.	Replication to a plea of tender, that previous to the making of the tender, plaintiff ſued out a writ of *ſubpœna* in the Court of Exchequer in this ſuit; and opinion on the replication.	
177.	Replication to a plea of tender, that plaintiff ſued out a bill of Middleſex, with continuances before the tender.	
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536, 537, 538, 539.	Plea of general iſſue to part, to reſidue a tender. Replication, ſubſequent demand, refuſal. Rejoinder and iſſue; with opinion on the *caſes*.	
	Plea as to the firſt part of the ſecond Count; and as to the third promiſe, *non aſſumpſit*; as to the reſidue, a *tender*, -	2. R. P. B. R. 79
	Plea, *non aſſumpſit* to the whole, and a tender to part. Replication, demurring to the tender; and iſſue. Entry where the plaintiff admits the *tender*, takes the money out of court, and proceeds for further damages under the general iſſue. (*See* Practical Forms, *poſt*.) -	[illegible] 218, 219, 220
	Replication to a plea of tender, that plaintiff, after the tender, requeſted defendant to pay him, but he refuſed,	[illegible] 220
	Plea in *aſſumpſit* to a declaration of E. T. 8. G. 2. and plea ſame term, of a tender, before the exhibiting the bill. Replication that the plaintiff ſued out a *latitat* anterior to the tender. Rejoinder, admits the cauſe of action accrued before the filing of the bill, but denies that he promiſed before the *latitat* [illegible] - - - - -	1. Wilſ. Rep. 141. a.
	Plea of tender in *aſſumpſit*. Replication, denying the tender, - - - - - -	1. R. P. C. B. 155
	Plea as to part, *non aſſumpſit* as to reſidue, a *tender* and a *notice of ſet-off* delivered with the ſame plea. (*See* Practical Forms.).	2. R. P. C. B. 67. 69.
	Pleas as to the firſt, ſecond, fourth, fifth, and ſixth promiſes, and the whole of the third, except ſix pounds, *non aſſumpſit*, and as to that, a tender. Replication, accepting the money tendered and award of *venire* to try the iſſue. (*See* Practical Forms.) - - - -	Pl. Aſſ. 225, 226
	Plea to ſecond, third, fourth, fifth, and part of firſt promiſe, *non aſſumpſit*; and to reſidue of firſt, a tender. Replication and iſſue on the tender, - - -	[illegible] 269. 271
	Plea to *aſſumpſit* in B. R. of general iſſue to the two laſt promiſes, and a part of the money in the *firſt*, and to the reſidue a tender. Acceptance by plaintiff of money tendered out of court, - - - -	[illegible] 443
	Plea in *aſſumpſit* to the firſt, third, fourth, and fifth promiſes, *non aſſumpſit*; and to ſecond, that the meat, &c. therein	

mentioned was worth no more than one pound fourteen shillings, which defendant tendered. REPLICATION thereto, offering an issue on the value of the goods,

Plea of tender, with an *uncore prist* to part, and *non assumpsit* to the other part. REPLICATION taking issue on the tender,

Non assumpsit to part, and tender to the rest, 2. *Mo. Ent.* 143. Replication and issue.

Plea to part, *non assumpsit*; and to the residue, a tender of money brought into Court. Replication denying the tender, *Tho.* 60. 66. *Br. Red* 90. *Cl. Ass* 104.

Plea to one promise *non assumpsit*, and to the other, that he had PAID part, and a tender to the residue brought into Court, *Br. Red.* 90. 107.

Plea, PAYMENT as to part, and a tender as to the residue, and the money brought into Court, *Bro. Vad.* 103. *Cl. Ass.* 140.

Plea to a promise to pay the loss sustained by carrying away wood that the defendant offered to pay twenty-six shillings, which was a sufficient recompence. Replication, protesting that he did not offer, for plea that it was not sufficient, 1. *Bro.* 37.

Assumpsit for wares, &c. and *mutuatus* for money had and received, *non assumpsit* as to several parcels of the money, and tender before the writ purchased as to the residue, *tout temps prist*. Replication, denying the tender before plaintiff brought his original, to which plaintiff demur. *Lev. Ent.* 30. *Br. M.* 107.

Plea, *non assumpsit*. *Bro. Red.* 30 Plea of tender of ten shillings, for diet and lodging, as being sufficient, plaintiff refused, *Bro. Va. Me.* 89.

Statutes pleaded in Discharge. (51)

1. Bankruptcy.
2. Court of Conscience Act.
3. Insolvent Debtors Act.
4. Limitation.

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308 Plea to Declaration by an attorney for work and labour,
309 against executors: 1st, General issue after imparlance; 2d, *bankruptcy* in plaintiff and his copartner, with all the proceedings under the commission set out.
312 Replication, 1st, *nol. pros.* to some Counts, and issue on others; and as to those that cause of action accrued after the assignment for the necessary support of
313 himself and family. Rejoinder, that plaintiff had
314 not obtained his certificate. Demurrer and joinder, *cur. adv. vult—dies datus—venire, Cooke's Bankrupt Law, 2d Ed.* 459.

Vol. III. Page		Precedents in Books of Practice, Reporters, &c.
186.	Plea (to a declaration for work and labour), 1st, *non assumpsit*; 2d, that the promises were made by defendant and one A. B. who is since a *bankrupt*, and	
188.	that plaintiff was *indebted to defendant and A. B. in more money*, &c. Replication thereto, and issue on the set off.	
189.	Plea (to a declaration on a bill of exchange, at the suit of the second indorsee against the acceptor), that the	
185.	first indorsee, at the time of his indorsing the bill, was a *bankrupt*, and that defendant is answerable to the	
186.	assignees of such bankruptcy, 19. Geo. 2. c. 32 s. 1. Replication, that bill was *bonâ fide* negociated, and plaintiff had notice of the bankruptcy. Rejoinder, that bill was not fairly negociated, and issue on the notice.	
186.	Plea of *non assumpsit* and bankruptcy pleaded.	
188.	Plea of bankruptcy, with notice generally in bar, in conformity to the statute, 5. Geo. 2. c 30. s. 7.	
	Non assumpsit by two defendants, *non assumpsit* and Bankruptcy by a third, *Lill. Ent.* 100. Replication, confessing the bankruptcy, but avers that he and the other *jointly assumpserunt*; the third makes default, and issue, -	R. Pr. B. R. 186, 187
	Plea of bankruptcy, and that the cause of action accrued before,	2. Will. Rep. 264
	Plea of *non assumpsit* and *non assumpsit infra sex annos*, that defendant was a bankrupt, and plaintiff's cause of action accrued before in C. B. - - - - 1. T. R. 19.	2. R. P. C. B. 16
	Plea of Bankruptcy, - - - - -	2. R. P. C. B. 64
	Plea to declaration against three defendants, impleaded; 1st, *non assumpsit* by two; 2d, *non assumpsit* by third, and issue; and for further plea, bankruptcy in defendant after cause of action accrued. Replication, confessing the bankruptcy, but says that all the defendants promised jointly; *dies datus* for defendants to rejoin; and judgment by default for want of rejoinder: and *venire awarded*, as well to try the issues as to enquire the damages on such judgment. (Practical Forms, 166) - -	Lill. Ent. 106, 107
	Replication to a plea of bankruptcy in plaintiff to *assumpsit* for monies due on an account stated, that plaintiff by deed assigned the debt sued for, before he became bankrupt, to A. B. for whose use he now sues, - - - - -	1. T. R. 619

Plea by three, two *non assumpserunt*, third, by leave of the court, *non assumpsit* and bankruptcy, *Lill. Ent.* 106.

15. 2. Court of Conscience Act.

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241.	Plea, court of conscience act for *London*, 3. Jac. 1. c. 15. and 14. Geo. 2. c. 10.	

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258. Plea of court of conſcience act for *Weſtminſter*, 23. Geo. 2. c. 27. ſ. 8. Replication, that defendant was indebted in forty ſhillings and upwards.

194. Plea of *non aſſumpſit infra ſex annos* to the 1ſt Count; to the 2d, 3d, and laſt, *non aſſumpſit* generally, except as
195. to fifteen pounds and upwards; to the whole of the fourth promiſe the court of conſcience act for the *Tower Hamlets*. *Replication* thereto, taking iſſue on the ſtatute of limitations as to the firſt promiſe, and as to the plea of court of conſcience act, ſhewing that plaintiff ſued defendant in B. R. by bill of Middleſex, and that defendant appeared the *fourth*, &c. and denying that defendant reſided within the juriſdiction of the court of conſcience, 23. Geo. 2. c. 33.

192. Replication, that defendant was an *attorney* of C. B. and not liable to be ſummoned in the county court.

193. Plea, court of conſcience act for *Southwark*, (32. Geo. 2. c. 6. to amend and explain 32. Geo. 2. c. 6.)

193. Plea, court of conſcience act (5. Geo. 3. c. 8.) for the *hundred of Blackheath and Bromley*, &c. in Kent.

194. Plea in C. B. *non aſſumpſit* to the whole, and the juriſdiction of the court of requeſts for the city of *London* by rule of court, and opinion on the propriety of pleading or ſuggeſting it.

191. Plea of the court of conſcience act for *Liverpool*.

195. Plea of court of conſcience act for the county of Middleſex 23. Geo. 2. c. 33. Replication that defendant was an attorney of C. B. and not liable to be ſummoned in the county court. (*See* Index, *poſt*. xxii. Other Pleas, &c.)

Plea by an *attorney* as to all, except one pound three ſhillings and eightpence; and as to that ſum, that he is liable to be ſued in the county court of *Middleſex*. Replication, that an attorney is privileged from being ſued there; on demurrer, judgment for plaintiff, - - - 1. Wilſ. Rep. 42.

Plea, that defendant was not indebted in forty ſhillings, and the *Southwark* court of requeſts, 22. Geo. 3. c. 47; and that defendant was reſident within the juriſdiction, - 2. H. Bl. 351.

3. Inſolvent Debtors' Acts.

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197. Plea of duplicate, defendant having been in cuſtody of an officer and ſurrendered in diſcharge of bail, &c.

196. Plea of duplicate as a priſoner.

197. Plea of diſcharge of a priſoner under the compulſive clauſe of inſolvent act, 1. Geo. 3. c. 27. ſ. 46.

199. Plea of diſcharge under the act of inſolvency as a priſoner
200. in cuſtody. *Replication* and iſſue.

198. Plea

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PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.

198. Plea of diſcharge under an inſolvent act, and REPLICATION.

201. Plea of duplicate of diſcharge under inſolvent act as a fugitive.

201. Plea, that plaintiff was diſcharged under an inſolvent act, and his eſtate and right of action veſted in the clerk of the peace.

Plea in *aſſumpſit* in diſcharge of execution againſt the body of an inſolvent debtors' act, defendant having been a fugitive. REPLICATION, employment and reſidence in foreign parts, viz. at St. Helena, as chaplain of the iſland, in the ſervice of the Eaſt-India Company, upon a ſtipend, and not a fugitive. Rejoinder, not ſo reſident, - - - Mor. Pr. 241, 242. 244

Plea of inſolvent debtors' act, defendant having been a priſoner for debt. Replication, not duly diſcharged, - - - *Ibid.* 244. 246

Plea of diſcharge of inſolvent debtor under 21. Geo. 3. defendant being at large upon the deſtruction of the B. R. priſon in June 1780, - - - - - *Ibid.* 246

Plea of inſolvent debtors' act, 2. Ann, c. 16. in ſtay of execution as to his perſon, and confeſſes action, but traverſes the time of incurring the debt. Demurrer as to perſon. Joinder as to perſon, and apparel, and bedding, to the value of ten pounds, - - - - - 2. Ld. Raym. 1263

Plea, ſtatute of 10. Ann, in diſcharge of defendant's perſon only, being a priſoner. Replication, that he was not a true priſoner, and traverſes his diſcharge. *Lill. Ent.* 108.

4. Limitations, Statutes of.

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197. Plea, 1ſt, general iſſue; 2d, *actio non accrevit infra ſex annos.* Replication to 2d plea, that after the ſaid cauſes of action accrued defendant was in foreign parts beyond the ſeas, until he returned in 1780, and that plaintiffs, within ſix years after his return, exhibited their bill. Rejoinder, taking iſſue.

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205. REPLICATION to a plea of *non accrevit infra ſex annos*, that the plaintiff's teſtator was *non compos mentis* for a long time before, and at his death, and that the plaintiffs ſued out their original writ, within, &c.

205. REPLICATION to a plea of the ſtatute of limitations, that cauſe of action aroſe within ſix years.

204. REPLICATION to *non aſſumpſit infra ſex annos*, that the inteſtate continued at ſea till his death, and that within ſix years after his deceaſe plaintiffs exhibited a bill

at

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	at the ſuit of an *adminiſtrator*. Rejoinder, taking iſſue.	
203.	Replication to a plea of ſtatute of limitations, that plaintiffs ſued out a bill of Middleſex, and promiſed within ſix years next before the ſuing out of the precept.	
203.	Plea, 1ſt, general iſſue; 2d, *non aſſumpſit infra ſex annos*; 3d, ſet off for goods ſold, &c.	
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213.	Plea, *actio non accrevit infra ſex annos*. Replication, taking iſſue.	
213.	Plea of *non aſſumpſit* and *non aſſumpſit infra ſex annos*.	
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205.	Replication to a plea of the ſtatute of limitations, that plaintiff was beyond ſeas when the action commenced and exhibited, &c. within ſix years after his [illegible] arrival.	
203.	Replication to a plea of the ſtatute of limitations, that a writ of *latitat* was ſued out within ſix years, the rejoinder admitting the ſuing out the *latitat*, but denies that he promiſed within ſix years.	
205.	Replication to a plea of ſtatute of limitations, and to action at the ſuit of plaintiffs, as executors, that their teſtator ſued for the ſaid debt, and proceeded as far as the declaration, and died; whereupon the action was diſcontinued, and that defendant promiſed within ſix years after the ſuit.	
207. 208.	Plea, *non aſſumpſit infra ſex annos*. Replication; iſſue.	
209.	Replication, *actio non accrevit infra ſex annos* to plea of ſet off.	
208.	Plea of ſtatute of limitations, *non aſſumpſit infra ſex annos* and ſet off.	
	Non aſſumpſit infra ſex annos. Replication, - -	
	Non aſſumpſit and *non aſſumpſit infra ſex annos*, - -	*Ibid.* 20[illegible]
	Replication of *non aſſumpſit* and *non aſſumpſit infra ſex annos* to a plea of ſet off, - - -	*Ibid.* 20[illegible]
	Actio non accrevit infra ſex annos, - - -	*Ibid.* [illegible]
	Replication to a plea of *non aſſumpſit infra ſex annos*, that plaintiff ſued out a bill of Middleſex, with continuance by the *non miſit breve* to the time of appearance. Rejoinder, *nul tiel* record, ſurrejoinder *habetur tale recordum*, -	2. R. P. B. R. 81. [illegible]
	Non aſſumpſit infra ſex annos. Replication, that plaintiff undertook within ſix years, and iſſue, - -	Morg. Pr. 217. 21[illegible]
	Plea of *non aſſumpſit infra ſex annos*, Replication thereto. Rejoinder, - - - -	1. R. P. C. B. 148. 14[illegible]
	Plea, *actio non accrevit infra ſex annos*. Replication,	*Ibid.* 14[illegible]

Vol. III. Page		Precedents in Books of Practice, Reporters, &c.
	Plea, *non aſſumpſit* and *non aſſumpſit infra ſex annos*, that defendant was a *bankrupt*, and plaintiff's cauſe of action accrued before his - - - -	2. R. P. C. B. 16
	Plea of ſtatute of limitations. Replication, *latitat* ſued out with divers continuances, which were ſued out with intent to declare in that action; averment, that the cauſes of action in the bill and the writ are the ſame. Rejoinder, taking iſſue on the *non aſſumpſit* within ſix years before the iſſuing the *latitat*, - - - - -	Lill. Ent. 32
	Replication, a bill of Middleſex ſued out, with divers continuances, with *ſuggeſtion* of the demiſe of the king; and that afterwards a *latitat* was ſued out and continued; and that the promiſe was made within ſix years before bill of Middleſex ſued out. (Practical Forms Suggeſtions.) -	*Ibid*, 194
	Replication to plea of ſtatute of limitations, *non aſſumpſit infra ſex annos*, that plaintiff ſued out a *latitat* and an *alias capias*, and three pluries thereon; after which the king died, and the defendants appeared before his acceſſion or ſucceſſion; and plaintiff declared againſt him in this action, and the cauſe of action accrued within ſix years before the iſſuing of the firſt writ, - - - -	*Ibid.* 122
	Plea of *non aſſumpſit* and *non aſſumpſit infra ſex annos* in one plea in B. R. - - - - -	Inſtr. Cl. 7 Ed. 261
	Plea of *non accrevit* action *infra ſex annos*. Replication thereto, that the action did accrue within ſix years, and iſſue,	Pl. Aſſ. 451, 452
	Replication to plea of ſtatute of limitations, that on, &c. plaintiff ſued out a bill of Middleſex, returnable on, &c. that continuances were entered till, &c. but ſheriff did not return the precept; but that plaintiff afterwards, on, &c. ſued out an attachment of privilege for ſame cauſe of action, to which defendant appeared, - - - -	3. T. R. 662
	Plea, *non accrevit infra ſex annos*. Replication, that before the eleventh day of February, 1725, viz. March twenty-fifth, 1720, plaintiff levied a plaint in ſheriff's court, which was removed by *habeas corpus*, and that the cauſe of action is the ſame. Demurrer with cauſes, for that the cauſe of action is not the ſame, - -	2. Ld. Raym. 1327

Plea to the firſt promiſe, *non aſſumpſit*, to the ſecond and third *non aſſumpſit* within ſix years, *Bro. Abr.* 74. 113.

Plea of ſtatute of limitations, *Mo. Ent.* 142. *Cl. Inſt.* 181. *Br. R.* 99. Replication, 104.

Plea of *non aſſumpſit* within ſix years. Replication, that the monies were due and payable between merchants in the courſe of trade. This was bad in *aſſumpſit*, but otherwiſe in account, 2. *Saund.* 123.

Plea to firſt and ſecond promiſe *non aſſumpſit infra ſex annos*; to third and fourth, *aſſumpſit* generally. Replication to firſt and ſecond, an original in treſpaſs, &c. ſued out within ſix years; and that he promiſed within ſix years next before the original. Defendant craves *over* of the original and hath it, and pleads that the writ will not warrant the declaration. Demurrer and joinder, 2. *Vent.* 155.

Non aſſumpſit within ſix years from ſuing out the *original*, *Lill. Ent.* 478; ſimilar plea from ſuing out the *bill*.

Other

Other Pleas in Denial, Avoidance, and Discharge.

Vol. III. Page		Precedents in Books of Practice, Reporters, &c.
121.	Plea that defendant aſſigned his property for the benefit of his creditors, under an order of the chancellor of Maryland in North America, by virtue of an act of Aſſembly.	
118.	Plea, (to declaration for work and labour, &c.) firſt, *non aſſumpſit*; ſecond, defendant entered into a deed of compoſition with his creditors to pay a pound rate in hand, and the remainder in four years, they covenanted not to ſue within four years.	
114.	Plea in bar that one of plaintiffs was partner with defendants, and therefore could not ſue.	
126.	Plea *nil habuit in tenementis* to an action for uſe and occupation. It is decided this is not a good plea.	
127.	Plea, that ſmuggled goods were the conſideration of the bill of exchequer. Qu. if a good plea?	
125.	105. Confeſſion of the action as to part, *non aſſumpſit* to the reſidue, with judgment as to the part confeſſed.	
115.	117, 118. Plea (to a declaration on a promiſſory note, indorſed on the back) that the plaintiff was tried at O. for murder, and convicted to be hanged, which judgment is in full force; ſet off of a promiſſory note given to plaintiff, and indorſed to defendant. *See* ſet off, *ante*. Replication to the laſt plea, *nul tiel record*; rejoinder to *nul tiel record*, and prays a *certiorari*. *See* Criminal diviſion, *Certiorari*.	
	Plea by an *attorney*, *non aſſumpſit* as to all except one pound three ſhillings and eightpence, and as to that ſum that he is liable to be ſued for it in the *county court of M.* plaintiff replies that defendant is an attorney, and privileged from being ſued there, on demurrer plaintiff had judgment. (*See* Index, xix. *ante*, Courts of Conſcience Act.)	1. Wilſ. 42. b.

Plea of a ſpecial *letter of licence* to an action on the caſe, brought on the promiſe, 3. *Inſt. Cl.* 273 *Hom.* 62.

Plea (to declaration in conſideration of ſurrender of a term in plaintiff's ſhop, defendant would put plaintiff into defendant's ſhop), that he tendered and plaintiff refuſed, 3. *Inſt. Cl.* 279.

Plea (to an action for not conveying lands) that plaintiff within the time diſcharged defendant from his promiſe, and that he ſold the lands to another. Replication and iſſue. *Ra. Ent.* 685.

Non aſſumpſit, 1. *Bro.* 67. 2. *Bro.* 9. *Mo. Ent.* 27, 28. *Hanſ.* 35, 59. *Cl. Aſſ.* 71. *Lil. Ent.* 56, 57.

Plea, alledging by proteſtation that he had not accounted nor was indebted; for plea, *non aſſumpſit*. *Pl. Gen.* 58.

Plea that an agreement was made on condition, and a traverſe of the agreement in the declaration. Replication, maintaining the declaration, and an iſſue on the traverſe, *Tho.* 74.

Plea that the bargain was made upon a condition that the plaintiff was to pay money at ſuch a feaſt which he had not paid; replication that the bargain was made without a condition, and traverſe that it was made on a condition, *Br. R.* 90.

Plea

Plea that the defendant promiſed upon ſuch a condition, and a traverſe of the promiſe in the declaration, and replication and iſſue upon the promiſe in the declaration, *Ro. Ent.* 97.
Plea that plaintiff had diſcharged defendant of his promiſe, *Clift.* 199.
Plea that he had left the premiſes in as good repair as they were at the time of the agreement, and an iſſue thereon, *Hanf.* 41.
Plea *non aſſumpſit* to the laſt promiſe, to the firſt a demurrer, 3. *Lev. Rep.* 149.
Plea to ſecond promiſe, *non aſſumpſit*, to firſt, a ſpecial plea, *Ibid.* 317.
Plea to *indebitatus aſſumpſit*, that plaintiff was a *recuſant convict*, with an averment that the judgment and record are in full force, plaintiff demurs, *Lev. Ent.* 11. 3. *Lev. Rep.* 4.
Non aſſumpſit pleaded to an action by commiſſioners of bankrupts, *Lev. Ent.* 15.
Plea to *aſſumpſit* for ſix pounds for a gelding ſold, that he bought the gelding on condition that plaintiff, on requeſt ſhould, by note under his hand, promiſe to repay defendant ſix pounds if any perſon ſhould claim property, and avers that he offered the ſix pounds, but plaintiff refuſed to ſubſcribe the note, *Bro. Vad.* 95. Replication and iſſue.
Plea to firſt promiſe, judgment by *non ſum informatus*, to the other *non aſſumpſit*, *Clift.* 103.
Non aſſumpſit by one defendant, *nil dicit* by another, *Cl. Aſſ.* 84.
Plea (to an action upon a promiſe to become bound to the plaintiff for money to be paid at the end of the year, or to pay ſo much upon demand) that defendant and another offered to ſeal and deliver a bond, &c. which the plaintiff refuſed to accept. Replication, that plaintiff requeſted defendant to pay him the money, which defendant was to pay upon requeſt, 3. *Brownl.* 75.
Plea (to *aſſumpſit* for not delivering goods), *non aſſumpſit* as to part, and to the reſidue that he had delivered to one C. by the appointment of plaintiff. Replication, that he did not deliver it by his appointment, *Pl. Gen.* 62.
Plea to *aſſumpſit* (for not delivering it at a certain time) that plaintiff before the time diſcharged defendant of his promiſe. Replication and iſſue, 1. *Bro.* 67.
Plea that defendant had pawned the ſatchel for which the action was brought, till the ten pounds were paid, *Cl. Aſſ.* 95. *Hanf.* 109.
Plea that the horſe was ſo ſick that he could not deliver him, *Cl. Aſſ.* 102.
Plea (to an action brought by a ſervant) confeſſes that plaintiff came into his ſervice, and there continued till ſuch a time, during which the teſtator had plentifully provided for the plaintiff, and that on ſuch a day the plaintiff voluntarily left the teſtator's ſervice, and traverſes that the plaintiff ſerved teſtator during the whole time in the declaration; ſpecial demurrer and judgment for the plaintiff, 3. *Saund.* 265.
Plea (to *aſſumpſit* for work, &c.) that plaintiff was not ready to go to Scotland, but refuſed. Replication maintains the declaration, and traverſes that he refuſed, and iſſue, 1. *Bro.* 76.
Plea of *non aſſumpſit* to an *award*, and verdict for plaintiff, *Vi. Ent.* 471.
Plea that defendant was retained to be *attorney* for the plaintiff in all actions brought againſt him. Replication, proteſting, &c. for plea, that he did not require defendant to appear as attorney for the plaintiff. Rejoinder and iſſue, 1. *Bro.* 33.
Plea by one defendant confeſſing judgment by *nil dicit*; the other as to the ten pounds, *non aſſumpſit*, and as to giving plaintiff her diet, he gave it her part of the time, and was ready to have done ſo for the remainder, but plaintiff took his wife from his houſe, and therefore he could not perform his promiſe. Replication, that he did not take her away, for plea, that defendant did not board, &c. and iſſue, *Bro. Va Me.* 112.
Plea to *aſſumpſit* for board, &c. *non aſſumpſit*, and that the wife eloped, and defendant gave notice to all perſons that he would not pay, &c. 3. *Inſtr. Cl.* 272. *Br. R.* 95, 96.

Plea (to *assumpsit to marry*) that defendant promised on condition that a jointure was made, and traverse of promise in the declaration, *Hern.* 228.

Plea (to action by surgeon) that the wound was not cured according to the promises by means of plaintiff, *Hern.* 229.

Plea to declaration on a bill of exchange, protesting, &c. for plea [illegible] is heir apparent to T. and for his better education was at Paris as an English gentleman, traversing that he was ever a merchant, demurrer thereto, 2. *Vent.* 294.

Plea (to *assumpsit* on a warrantry) that defendant did not warrant, 1. *Brownl.* [illegible] *Clift.* 939. *Bro. Red* 95. with a traverse.

Plea (by carrier) that the waggon, laden with the cloaths and other things, was broken open in an inn upon the road, and the cloaths, &c. were feloniously taken away, and traverse the promise to carry the cloaths safely, *Ro. Ent.* 3. *Instr. Cl.* 345. *Bro. Red.* 16.

Non assumpsit to pay money, *Wilk.* 279.

Plea by surgeon, to cure plaintiff, *Ra. Entr.* 463.

Plea protesting, &c. for plea *non assumpsit*, *Co. Entr.* 6. Similar plea with several *protestandos*, *Ra. Ent.* 4. *Wilk.* 272. *Co. Entr.* 6.

Plea *non assumpsit to indemnify* plaintiff, *Ra. Entr.* 12.

Plea that defendant did not purchase *lands* of plaintiff *modo et formâ*, *Ra. Ent.* 6.

Plea that defendant undertook to carry *falas*, &c. and traverses the *assumpsit* in the declaration, *Co. Ent.* 313.

Plea that defendant agreed to *enfeoff plaintiff of lands*, on condition that plaintiff would pay ten pounds before a certain feast-day, which he did not pay. Replication, that the agreement was made without such condition, and traverse the condition, *Ra. Entr.* 5.

Plea that plaintiff *bought* of defendant four acres situate elsewhere, and traverses that he bought the lands named in the declaration, *Ra. Entr.* 6. *Vet. Entr.* 48.

Plea (in *assumpsit* to become bound to pay forty-four shillings at the end of the year, or forty shillings lent, on demand), that defendant and another offered to seal and deliver plaintiff a bond for forty-four shillings, which plaintiff refused. Replication confessing, but says that he before requested defendant to pay him the sum of forty shillings. Rejoinder that he did not request, 3. *Brownl.* 75.

Plea (to *assumpsit* to deliver barley on a certain day) that plaintiff before the day discharged defendant of his promise, *Herne* 133.

Plea (to *assumpsit* to convey lands) that plaintiff within time discharged him of the agreement, *Ra. Entr.* 685.

Plea, an agreement to deliver to plaintiff two cows in discharge of his promise, and all trespasses. Replication, no such agreement, *Wilk.* 273.

Plea to *assumpsit* on a warrantry, that he did not warrant, *Ra. Ent.* 9. *Vet. Intr.* 19.

Similar plea of sheep with a *protestando*, *Upper Bench*, P. 231.

Plea that he warrants the horse free from a particular infirmity, and traverses the general warrant, *Her.* 223.

Plea (on a sale of sheep) that he defendant undertook, if any of them should die of a particular disorder, before a certain day, then the plaintiff on notice should pay for the same according to the rate, &c. no notice was given, and traverses the warrantry to be general, *Her.* 224.

Executors

Executors and Adminiſtrators. (Pleas by, in Aſſumpſit.)

In Diſcharge

Of Accord, &c. Set off, &c. Statutes, &c. &c.

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104. Plea, firſt, *non aſſumpſit* by teſtator; ſecond, *plene adminiſtravit* by adminiſtrator; third, *plene adminiſtravit præter*, ſeveral BOND DEBTS to defendant's ſelf and others, and alſo ſeveral debts due to defendant on ſimple contract, and five pounds aſſets, which is inſufficient to ſatisfy them.

257. Replication to plea of ſtatute of limitations and accord and ſatisfaction, to a declaration by executor on a bill of exchange, that teſtator ſued out of the court of chancery a writ, but before the return thereof he died, and plaintiffs, as executors, ſometime afterwards ſued out another writ, and that the cauſe of action did accrue within ſix years; to the third plea (accord, &c.) that neither the teſtator nor the plaintiffs are indebted to the plaintiff; fourth, admitting that A. B. did pay part, the teſtator did not accept the *laſt* bond in diſcharge of the *firſt*; fifth and ſixth, that teſtator did not accept the laſt bond by way of a *new ſecurity*. See the Pleas, Vol. 1. 254. and Accord and Satisfaction, *ante* Index.

200, 201. Plea by *baron and feme*, ſued as *executor and executrix ne unques executor et executrix*; ſecond, *plene adminiſtravit*. Replication and iſſue on the firſt plea; ſecond plea, prays judgment of aſſets *in futuro*, with opinion on action brought againſt *baron and feme*, widow of inteſtate, liable only as executrix *de ſon tort*.

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79, 80, Pleas (to an action by *huſband and wife*, of a former huſband for uſe and occupation in teſtator's lifetime), firſt, *non aſſumpſit*; ſecond, *non aſſumpſit infra ſex annos* next before exhibiting plaintiff's bill; third, that plaintiff's teſtator in his lifetime with one J. W. and E. J. eleventh Auguſt 1767, became jointly and ſeverally bound to Elizabeth Gritton in five hundred pounds, conditioned for payment of two hundred and fifty pounds when ſhe ſhould attain the age of twenty-one years, or marry, and for education and maintenance in the mean time; and that on the firſt of July 1775, defendant married ſaid E. G. ſhe not having then attained the age of twenty-one years, of which plaintiff's teſtator in his lifetime

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lifetime had notice; and that in teſtator's lifetime, and at the death, and of exhibiting plaintiff's bill, there was and yet is due and owing to the defendant by virtue of the ſaid writing-obligatory, for principal and in-
81. tereſt, fifty-ſix pounds ſeven ſhillings and threepence, and a further ſum of money lent, paid, had and received, and on account ſtated, in teſtator's lifetime which exceeded plaintiff's demand, and out of which defendant offers to *ſet off*, and deduct damages. *See*
82. declaration, Vol. II. p. 78. and caſes, p. 81. Replication, iſſue on defendant's pleas, except as to ſo much of the third as attempts to ſet off the money ſuppoſed to be due to defendant, by virtue of the bond therein mentioned, and ſpecial *demurrer* to that, becauſe it endeavours to ſet off a debt due and owing to defendant *and Elizabeth his wife*, and that it is
83. otherwiſe informal. Joinder and iſſue.

140. Plea of *non aſſumpſit* and *venire*.

444. Plea of ſtatute of frauds to an action brought by executor in conſideration of teſtator's forbearance, viz. withdrawing the record againſt defendant, but plea overruled on demurrer.

213. Plea *non accrevit infra ſex annos*. Replication and iſſue.

308, 309. 312, 313, 314. Plea to a declaration by an *attorney* againſt *executors*, for buſineſs done; imparlance, plea, firſt general iſſue; ſecond, *bankruptcy* in plaintiff and his co-partner, with all the proceedings under the commiſſion ſet out. Replication, firſt, *nol. proſ.* to fifth, ſixth, and ſeventh Counts; iſſue as to firſt, ſecond, third, and fourth Counts, and to plea of bankruptcy of plaintiff, that cauſe of action accrued after the aſſignment for the neceſſary ſupport of plaintiff and his family. Rejoinder, that plaintiff hath not obtained his certificate; demurrer and rejoinder, *curia adviſare vult dies datus venire*. *See* the caſe and note; this was a demurrer book; ſee Chippendale *v.* Tomlinſon, 25. G. 2. B. R. Cooke's Bankrupt Laws 459.

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215. Plea by an executrix; firſt, *non aſſumpſit*; ſecond, *plene adminiſtravit*; third, that teſtator was indebted to defendant, and that the goods which come to her hands ſhe *retains* to pay herſelf.

216. Plea to an action at the ſuit of adminiſtrator. *durante minoritate* of an infant, that they are not execu-
218. tors, and adminiſtration was obtained by fraud. Replication, fairly obtained, and infant within age.

212. Plea by an executrix, that the teſtator in his lifetime gave a bond to one A. B. which is ſtill in force, and that ſhe hath fully adminiſtered; ſecond plea, *plene adminiſtravit*.

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211. Plea of *plene adminiſtravit præter* two pounds.
209. Plea of debt of a ſuperior nature, pleaded by an executor *in bar* to a declaration in *aſſumpſit*.
215. Plea of *bona notabilia*, in an action on the caſe at the ſuit of an *executor*.
165. Plea of *ſet off* of money due on a judgment recovered by the defendant, againſt the plaintiff as *adminiſtrator*.
214. Plea of *plene adminiſtravit præter*, three pounds one ſhilling and eightpence in money.
214. Replication to a plea of *plene adminiſtravit*, that plaintiff, after the death of teſtator, ſued out a *latuat* againſt defendants, in order for them to put in common bail that he might exhibit his bill, and that at the time of exhibiting, &c defendant had divers
215. goods. Rejoinder, that defendant had no goods at the time, &c.
211. Plea (to declaration againſt an executor for uſe and occupation, and common Counts) that defendant was not executor, nor ever adminiſtered. Replication, that ſhe did adminiſter.
231. Plea 1 firſt, general iſſue, *non aſſumpſit* by teſtator, by three defendants, *plene adminiſtravit* by each ſeve-
232. rally. Replication, taking iſſue on the firſt *aſſumpſit*, and a conditional judgment of aſſets *in futuro* on the other three pleas jointly, on the event of the iſſue being found for the plaintiff
228. Replication of Michaelmas Term to a plea of *plene adminiſtravit* of Hilary, proteſting that after the laſt continuance of plea, aſſets came to defendant's hands, with opinion as to the propriety of ſuch replication.
223. Plea to action of *aſſumpſit* by *adminiſtratrix*; firſt, *non aſſumpſit* and iſſue; ſecond, *bankruptcy* in defendant after the cauſes of action accrued, and iſſue; third, *non aſſumpſit infra ſex annos*; fourth, to firſt, ſecond, third, and fourth Counts ſet off money due from teſtator; and to fifth, ſixth, and eighth Counts,
224. of money due from defendant as adminiſtratrix. Replication to third, that defendant did promiſe within ſix years, and iſſue; to fourth, *nil debit*, and iſſue.
243. Replication to a plea of outſtanding bonds pleaded, kept on foot by fraud.
219. Plea; firſt, general iſſue, that neither defendant or teſtator promiſed; ſecond, as to all the Counts in the declaration, except the laſt, that teſtator appointed one P and two others, joint executors with defendant, and concluſion in bar; third, that if any promiſe was made, it was made by all the exec-
220. utors jointly. Replication to the firſt plea *ſurmiſer* to the ſecond, that J. R. never proved the will

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nor adminiſtered; third plea, iſſue. REJOINDER, demurring generally to replication to ſecond plea, and *ſimiliter* to replication to third plea.

Plea to an action at the ſuit of plaintiffs, co aſſignees under a commiſſion of bankrupt againſt defendants, as executors, of outſtanding debts, on a bond for payment of money only, bonds for payment of money in conſideration of a marriage, and on certain conditions which are performed, of the debts due under the aſſignment to plaintiffs and defendants ſhew that the commiſſioners had brought an action againſt defendants for the ſame, which are ſtill depending; of debts on JUDGMENT RECOVERED againſt the teſtator in his lifetime, and *non cepit* for the payment of annuities and judgment due by ſimple contract by teſtator, all with *plene adminiſtravit præter*.

245. Plea of *plene adminiſtravit* by adminiſtrator

210 Plea of *plene adminiſtravit*, generally by defendant ſued by a wrong name.

214. Special REPLICATION to a plea of *plene adminiſtravit*, ſetting forth the ſuing out and ſerving of a writ, and that at the time of the ſuing out, &c. defendant had aſſets in his hands ſufficient, &c.

215. REJOINDER, admitting the ſuing out and ſerving, but ſaying that defendant had not aſſets.

2[illegible]. Plea by adminiſtrators, firſt, *plene adminiſtravit*; ſecond, of ſuperior debts, to wit, a judgment recovered by aſſignee of a *bankrupt*, againſt defendant's teſtator in his lifetime, and bonds outſtanding, money expended by one of the defendants in diſcharge and ſatisfaction of teſtator's debts, and *plene adminiſtraverunt præter* five pound, which are not ſufficient to ſatisfy, &c

244. Plea by executor, that teſtator *non aſſumpſit* to 1ſt, 2d, and laſt Count, and as to the 3d, divers bonds in large ſums from teſtator to defendant himſelf, and *plene adminiſtravit præter* a certain ſum which he retains in part ſatisfaction.

221. Plea 1ſt, teſtator *non aſſumpſit*, 2d, a bond debt outſtanding, and *plene adminiſtravit præter* five pounds, which are aſſets to that debt and not ſufficient, 3d,

222. *plene adminiſtravit* REPLICATION to 2d plea, taking judgment of aſſets *in futuro*, with ſtay of proceedings till trial of the iſſues; to 3d, iſſue, *plene adminiſtravit*

219. Plea, 1ſt, general iſſue, that neither teſtator nor defendant promiſed, 2d, to all the Counts in the declaration, except the laſt, that teſt or appointed one of the plaintiffs and two others executors jointly with defendant, and concludes in bar, 3d, as to the laſt Count, if any promiſe was made it was made jointly.

220. REPLICATION to the 1ſt plea, *iſſuetur*; to the 2d

Vol. III. Page		Precedents in Books of Practice, Reporters, &c.
	plea, that J. R. never proved the will or administered;	
221.	to the 3d plea, taking issue on it. Rejoinder, demurring generally to the replication to the 2d plea, and *similiter* to the replication to the 3d plea.	
158.	Plea to *assumpsit* by executor, that testator sold to the plaintiff a cow for seven pounds, which, at the time of his death was unpaid, and that he executors of her plaintiff agreed to release each other on condition of the defendant's paying the plaintiff thirteen pounds.	
223.	Plea of *plene administravit* and *outstanding debts*.	
223.	Plea to action of *assumpsit* by administratrix; 1st, *non assumpsit* and issue joined, BANKRUPTCY in defendant after the causes of action accrued and issue, and 4th plea, to 1st, 2d, 3d, and 4th Counts, set off money due from testator, and to 5th, 6th, and 8th Counts, money due	
224.	to defendant as administratrix. REPLICATION to 3d plea, that defendant did promise within six years; to 4th plea, *nil debet* and issue.	
224.	REPLICATION of Michaelmas term to plea of *plene administravit* of Hilary, protesting that after the last continuance of plea assets came to defendant's hands, with opinion as to the propriety of such replication.	
225.	Plea, 1st, *non assumpsit* by testator, 2d, set off; 3d, *plene administravit*, 4th, outstanding debts on JUDGMENT RECOVERED, and on covenant for the payment of annuities, with *plene administravit praeter*.	
231.	Plea, 1st, general issue, *non assumpsit* by two defendants, and *plene administravit* by each severall.	
232.	REPLICATION, taking issue on the *assumpsit*, and a conditional judgment of assets *quando acciderint* on the other three pleas jointly on the event of the issue being found for the plaintiff.	
293.	Plea, 1st, *non assumpsit*; 2d, *non unques* executor, not ever administered as executor, 3d, *plene administravit*;	
294.	4th, set off *non assumpsit infra sex annos*. REPLICATION to 2d, that defendant is executor; to 3d, hath administered as executor, and that assets have come to his hands; to 4th, that when causes of action accrued testator was abroad, and remained and continued abroad till his death; and that the original was sued out within six years.	
230.	Special REPLICATION to a plea of *plene administravit*, setting forth the suing forth and serving of *latitat*, and that at the time of the suing out, &c. defendant had assets in his hands sufficient, &c. Rejoinder,	
230.	admitting the suing out and serving the *latitat*, but say that defendant had not assets, &c.	
215.	Plea by executor of *judgment recovered* in C. B. at the suit of plaintiff's husband and wife.	
	Non assumpsit by testator, *Lill. Ent.* 473.	1. R. Pr. B. R. 179

PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.

Non assumpsit and *non assumpsit infra sex annos*, and *a set off*, that plaintiff's testator and plaintiff, as executor, are indebted in more money. REPLICATION thereto, - - - 2. R. Pr. B. R. 87

Plea, *Non assumpsit*; 2d, *non assumpsit infra sex annos*; 3d, plea of mutual debts owing from plaintiff's testator, and plaintiff his executor, to defendant. REPLICATION, *quod assumpsit infra sex annos*, and that testator was not indebted, &c.; and that plaintiff, as executor, is not indebted to defendant in more than is due from her to plaintiff, as executor. 2. R. P. C. B. 31

Plea, *non assumpsit* by testator pleaded by executor; 2d, statute of limitations; 3d, set off. REPLICATION, a *latitat* sued out and a promise within six years; to 3d, *nil debet*. Qu. Rejoinder, that the writ issued in vacation of the preceding term; *non assumpsit infra sex annos* as to the issuing it. (Johnson v. Smith.) - - - 2. Burr. 950 to 968

Plea by *administratrix* for goods sold to intestate and on an account stated; outstanding debts on bonds; judgments against defendant, as administratrix, on simple contracts; and *nul* assets *ultra* forty shillings, which were not sufficient to satisfy. REPLICATION, that one bond is part paid, and that obligee would accept ten pounds in satisfaction; same replication to the other bonds of judgment, and that she hath sufficient assets. REJOINDER, protesting no part was paid, saith she hath not assets to satisfy, &c. and issue, - Lill. Ent. 58

Plea by administrator, that he, together with another person now deceased, recovered judgment against intestate in C. B. in his lifetime for one thousand pounds debt, and *plene administravit* except twenty pounds, which are charged with that debt, - - - - - *Ibid.*

Plea to *assumpsit* brought by a simple contract creditor against an executor *de son tort*, that after action brought, and before plea pleaded, he delivered over the effects to the rightful administrator; that no administration was granted till after action brought, and a *retainer* of his own debt of a superior degree. Error and assignment of errors. (See Error.) - - - - 2. H. Bl. C. B. 18

Plea of *statute of limitations* by administrator, for the lodging of two children. REPLICATION, *actio accrevit infra sex annos*. Demurrer joinder, judgment for the plaintiff on demurrer; writ of enquiry awarded; damages assessed on the first Count; damages on the rest of the Counts; *remittitur damnum* of part; final judgment; *misericord*. assignment of errors; plea in *nullo est erratum*. (See Error and Practical Forms.) - - - - 3. Ld. Raym. N. Edit. 11. to 14

Plea to a declaration in *assumpsit* by the assignees of a bankrupt against executrix of her late husband, 1st, *non assumpsit* by testator; 2d, *statute of limitations*; 3d, *set off* to two first Counts. REPLICATION to 2d plea, a *latitat* sued out, and a promise within *sex annos*; replication to 3d plea, *nil debet*. REJOINDER, that the *latitat* issue long after the *teste*, and that he did not promise within six years of issuing it. Demurrer, - - - - 2. B[illegible]

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

REPLICATION by *attorney* to a plea of *non aſſumpſit infra ſex annos*, before ſuing out the original writ an attachment of privilege againſt the defendant, as adminiſtratrix of E.; afterwards plaintiff died, and made preſent plaintiff executrix, whereby ſuit abated; and avers, that he undertook within ſix years before ſuing out attachment. Demurrer and joinder, - - - - - 2. Bl. Rep. 1131

Plea to declaration by executor, in conſideration plaintiff had ſerved teſtator, he undertook to provide for him in a plentiful manner, and that plaintiff came into the ſervice of teſtator the ſixth of March 1747, and there continued till December 1758, and that the teſtator did plentifully provide for ſaid plaintiff, and paid him yearly for his ſalary; and traverſes that the plaintiff continued to ſerve till, &c. Demurrer, joinder, continuance, judgment, award of inquiry, 1. *Saund.* 22. 3. *Lev.* 227. *Cro. El* 99. 667. *Cro. Car.* 278. *Lut.* 299. 468, 469. 2. *Saund.* 207. 239. 1. *Lev.* 98. 10. *Co.* 116. (*See* Practical Forms), - 1. Mod. Ent. 117

Non aſſumpſit by an executor, *Bro. Vad.* 75. 113.

Non aſſumpſit within ſix years by an executor, ſetting forth the time of ſuing out the original. Replication and iſſue, 2. *Mo. Ent.* 138. *Cl. Aſſ.* 115.

REPLICATION that plaintiff ſued out a *latitat*, and that the cauſe of action accrued within ſix years before, *Mo. Ent.* 138.; and an *alias latitat* ſued out with ſeveral continuances, *Ibid.* 140.

Plea in a feigned iſſue to firſt promiſe, that defendant had paid more than he received; to ſecond, that inteſtate was not indebted to plaintiff, *Lill. Ent.* 48. 66.

Plea that defendant never was executor; and replication, *Cl. Aſſ.* 74. *Hanſ.* 105.

Non aſſumpſit within ſix years by an executor. Replication and iſſue, 2. *Mo. Ent.* 138. *Cl. Aſſ.* 95.

Plea that teſtator gave him orders to ſell the cloth, which he did accordingly, and *paid* the money to the teſtator in his lifetime, *Bro. Va. Me.* 88.

Plea, that after teſtator's death, and after the marriage of the plaintiff T. R. and A. his wife, he *accounted* with the ſaid T. R. and was found in arrear forty ſhillings, which he paid, and the ſame was received in full of all demands. Replication, proteſting that he had not accounted, for plea that he hath not paid; and iſſue, *Brown's Va. Me.* 100.

Plea that defendant and inteſtate did *account*, and thereupon it did appear that he owed nothing to inteſtate. Replication that he did not account; and iſſue, *Ibid.* 109.

Plea, proteſting no ſuch promiſe, he *paid* ten pounds five ſhillings to the inteſtate in his lifetime, in full *ſatisfaction*. Replication that he had not paid it; and iſſue, *Ibid.* 116.

Plea that teſtator had *accounted* with him in his lifetime, and defendant was found in arrear in twelve pounds; that afterwards he paid ten pounds, and the other forty ſhillings he offered to the executor, 3. *Juſtr. Cl.* 277. Replication, proteſting that he had not paid nor offered, &c. Plea that he made ſuch promiſe, *prout*, and traverſes the account. Rejoinder that he accounted, *modo et formâ*; and iſſue, *Ibid.* 279.

Plea, that adminiſtration never was granted to plaintiff, *Cl. Aſſ.* 117. *Hanſ.* 105.

Plea that teſtator *paid* plaintiff twenty pounds in *ſatisfaction*, *Hanſ.* 131.

Plea

Plea by one executor, *plene administravit*; the other renounces the probate of the will, and pleads that no effects came to his hands.

Plea, *plene administravit*, 1. *Bro.* 17. *Hanf.* 44. *Bro. Va. Me.* 116.

Plea that teſtator, *non aſſumpſit*; verdict and judgment for plaintiff, *Ro. Ent.* 64.

Plene adminiſtravit. Replication and iſſue, *Bro. Met.* 18.

Non aſſumpſit by executors and adminiſtrators, *Bro. Va. Me.* 75.

Plea (to action for ſheep ſold by teſtator), that teſtator and defendant had *accounted*, on which defendant was found in arrear eight pounds, and defendant afterwards paid ſeven pounds thereof, and offered the other to the executor. Replication, proteſting that he had not paid nor offered plea, maintains the declaration, and traverſes that defendant had accounted with teſtator. Rejoinder that he had accounted, 1. *Bro.* 14.

Plea that inteſtate was indebted on a bond to R. in twenty pounds, and in thirty pounds to H. for rent unpaid at the time of his death, and that he hath not any goods beſides, *Vid.* 45.

Plea by adminiſtrator as to part, that inteſtate, in his lifetime, paid it; and as to the reſidue, that defendant *paid* plaintiff ten pounds in *full ſatisfaction* of the promiſe. Replication that inteſtate had not paid part, and that defendant had not paid the reſidue, *Br. R.* 97.

Plea (by adminiſtratrix) of a *judgment* in debt in B. R. on bond againſt the adminiſtrator, that inteſtate was *indebted on three ſeparate bonds* in ſo much, and that he had no effects beſides. Replication that defendant had paid fifty pounds after the judgment, in full ſatisfaction of the judgment, and it remained undiſcharged *by fraud*; and as to bonds, defendant had paid ſeveral ſums in full ſatisfaction of the debts, and they remained uncancelled by fraud. Rejoinder, that the judgment remained in full force, and traverſes the fraud; and iſſue, *Br. R.* 55.

Plea that plaintiff brought his action *in the ſheriff's court*, and had a verdict and *judgment*, *Bro. Ma. Me.* 76. Replication that the recovery was for eight pounds eight ſhillings, which teſtator was indebted to him for wine; and traverſes that they were for the ſame cauſe of action, 87. Defendant takes iſſue on the traverſe. Verdict and judgment for plaintiff, 88.

Plea of *non ſumpſit infra annos*, before the day of ſuing out the original, to an action brought by adminiſtrator, and that adminiſtration was granted ſuch a day, *Lil. Ent.* 476.

Plea by adminiſtratrix, that inteſtate was indebted on *bond* to E. S. and a *judgment recovered* in B. R. againſt adminiſtratrix on ſimple contract by teſtator, and *nul aſſets ultra*.

Plea of *payment* of part in teſtator's lifetime, and part by himſelf ſince teſtator's death *Cl. Aſſ.* 148. Replication that he had not paid; and iſſue.

Plene adminiſtravit, &c. *Cl. Aſſ.* 166. 167. *Hanf.* 195.

Nil debet by one executor, plea by another, *ne unques* executor, *Cl. Aſſ.* 174.

Plea *ne unques* executor by one, and judgment by *non jum infirmatus* as to the other, *Ib.* 177.

Plea *ne unques* executor by one, and *plene adminiſtravit* by the other, *Hanf.* 119.

Plea of *plene adm. ultra*, *Hanf.* 179.

Plea that teſtator was indebted by bond to J. who *recovered* thereon *in the borough court*; and replication judgment *per fraudem*, *Carter B. P.* 241.

Plea that inteſtate was indebted by bond, and that he had not aſſets *ultra*. Replication that he had, &c. 3. *Brownl.* 63.

Plea (on bill of exchange), proteſting that they had no goods; for plea, *non aſſumpſit*, 3. *Brownl.* 66.

EXECUTORS AND ADMINISTRATORS.

In the Common Pleas.

AND the ſaid William, by Nathaniel D. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid Duke did not undertake and promiſe in manner and form as the ſaid John hath above thereof complained againſt him the ſaid William; and of this he puts himſelf upon the country, &c. And for further plea in this behalf the ſaid William, by leave of the court here for this purpoſe firſt had and obtained according to the form of the ſtatute in that caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſaith, that *he the ſaid William never was executor of the laſt will and teſtament of the ſaid Louis Philip Joſeph, Duc d'Orleans, deceaſed, as the ſaid John hath above alledged*; *nor has he ever, as an executor of the laſt will and teſtament of the ſaid Louis Philip Joſeph, Duc d'Orleans, adminiſtered of the goods and chattels which were of the ſaid Louis Philip Joſeph, Duc d'Orleans, at the time of his deceaſe*; *and* this he the ſaid William is ready to verify: wherefore he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.: And for further plea in this behalf the ſaid William, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt him the ſaid William, becauſe he ſays, *that he hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid Louis Philip Joſeph, Duc d'Orleans, deceaſed, at the time of his death, and which have ever come to or been in his hands to be adminiſtered, to wit*, at Weſtminſter aforeſaid, in the county aforeſaid; *and that the ſaid William hath not, nor had he, on the day of ſuing out the original writ of the ſaid John againſt the ſaid William, or at any time afterwards, any goods or chattels which were of the ſaid Louis Philip Joſeph, Duc d'Orleans, at the time of his death, in the hands of him the ſaid William to be adminiſtered*; *and this* he the ſaid William is ready to verify: wherefore he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c.: And for further plea in this behalf the ſaid William, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, ſays, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt him the ſaid William, becauſe he ſays, that *the ſaid Duke did not undertake or promiſe at any time within ſix years next before the day of ſuing out the original writ of the ſaid John againſt the ſaid William, in* manner and form as the ſaid John hath above alledged; and this the ſaid William is ready to verify: wherefore

Plea 1ſt, non aſſumpſit; 2d, ne unques executor, nor ever adminiſtered as executor; 3d, plene adminiſtravit; 4th, teſtator non aſſumpſit infra ſex annos.

he prays judgment if the ſaid John ought to have or maintain his aforeſaid action thereof againſt him, &c. S. SHEPHERD.

Replication to ſaid, that defendant is executor; that hath adminiſtered as executor, and that after ſuch conveyed hands to him, &c. that when cauſe of action firſt accrued teſtator was abroad, and remained and continued abroad till his death, and that the original was ſued out within ſix years.

And the ſaid John, as to the ſaid plea of the ſaid William by him firſt above pleaded in bar, and whereof he hath put himſelf upon the country, doth the like, &c.: And as to the ſaid plea of the ſaid William by him ſecondly above pleaded in bar, he the ſaid John ſays, that he ought not, by reaſon of any thing therein alledged, to be precluded from having his aforeſaid action thereof maintained againſt the ſaid William, becauſe he ſays, that the ſaid William, at the time of ſuing out the original writ of the ſaid John in this behalf, was, and from henceforth hitherto hath been, and ſtill is, the executor of the laſt will and teſtament of the ſaid Louis Philip Joſeph, Duc d'Orleans, deceaſed, and that the ſaid William hath adminiſtered divers goods and chattels which were of the ſaid Louis Philip Joſeph, Duc d'Orleans, at the time of his deceaſe, as executor of the laſt will and teſtament of the ſaid Louis Philip Joſeph, Duc d'Orleans, to wit, at Weſtminſter aforeſaid; and this he the ſaid John prays may be enquired of by the country, &c.: And as to the ſaid plea of the ſaid William by him thirdly above pleaded in bar, he the ſaid John ſays, that he ought not, by reaſon of any thing therein alledged, to be precluded from having his aforeſaid action thereof maintained againſt him the ſaid William, becauſe he ſays, that the ſaid William hath, and on the day of the ſuing out the original writ of the ſaid John againſt the ſaid William, to wit, on the day of at Weſtminſter aforeſaid, had divers goods and chattels which were of the ſaid Louis Philip Joſeph, Duc d'Orleans, &c. at the time of his death, in the hands of the ſaid William to be adminiſtered, of a large value, to wit, of the value pounds, to wit, at Weſtminſter aforeſaid; and this he the ſaid John prays may be enquired of by the country, &c.: And as to the ſaid plea of the ſaid William, by him laſtly above pleaded in bar, he the ſaid John ſays, that he ought not, by reaſon of any thing therein alledged, to be precluded from having his aforeſaid action thereof maintained againſt the ſaid William, becauſe he ſays, that at the reſpective times when the ſaid ſeveral cauſes of action in the ſaid declaration mentioned firſt accrued to the ſaid John, he the ſaid Duke, now deceaſed, was abroad in foreign parts beyond the ſeas, to wit, at Paris in the kingdom of France, and that the ſaid Duke continued and remained abroad in foreign parts beyond the ſeas from thence until and at the time of his deceaſe; and that the ſaid John, within ſix years next after the deceaſe of the ſaid Duke, to wit, in the term of St. Michael now laſt paſt, ſued out his original writ againſt the ſaid William, executor as aforeſaid; and this he the ſaid John is ready to verify: wherefore he prays judgment and his damages on occaſion of the not performing of the promiſes and undertakings aforeſaid to be adjudged to him, &c. S. LE BLANC.

DIGNITY

DIGNITY OF PERSON PLEADED TO THE JURISDICTION IN ABATEMENT.

Plea in abatement to the jurisdiction of dignity of perſon, that defendant is peer of England and Scotland, and ought not to be ſued by bill.

AND Hamilton Fleming, earl of Wigtoun, againſt whom the ſaid William Blackmore hath exhibited his bill, and declared by the name of the right honourable Hamilton Fleming, commonly called earl of Wigtoun, in his own proper perſon comes and prays judgment of the bill aforeſaid, becauſe he ſays, that the lord king James the firſt, late king of England, Scotland, &c. by his letters patent, ſealed with his great ſeal, and made at Weſtminſter, on the nineteenth day of March, in the year of Our Lord 1606, conſidering the good, faithful, and grateful ſervice of his beloved couſin John lord Fleming to him beſtowed, gave and granted to his faithful and well beloved couſin and councellor John Earl of Montrole, and to his couſin and councellor, his chancellor Alexander earl of Fermelinodum, the authority of making, conſtituting, creating, and inaugurating the aboveſaid John lord Fleming earl of Wigtoun, with ſuffrage, place, and pre-eminences in all the ſaid lord the king's parliaments, counſels, governments, and conventions according to his order and creation, which premiſes, with all the dignities and privileges to them belonging, the ſaid lord the king did thereby will to remain and endure in all future time with the ſaid John lord Fleming, and his heirs-male lawfully and lineally deſcending, as by the ſaid letters patent, remaining of record in the king's office of the great ſeal in Scotland, may appear: And the ſaid Henry Fleming earl of Wigtoun further ſays, that the ſaid earl of Montrole, and earl of Fermelinodum by virtue of the ſaid authority afterwards, to wit, on the ſame day and year aforeſaid, to wit, at Weſtminſter aforeſaid, in due form of law, did make, conſtitute, create, and inaugurate the ſaid John lord Fleming earl of Wigtoun, with the ſuffrage, place, and pre-eminences in the ſaid lord the king's parliament of Scotland, according to his ſaid order and creation; and the ſaid John lord Fleming thereupon then and there became and was earl of Wigtoun, with all the dignities and privileges thereto belonging, to him and his heirs male lawfully and lineally deſcending: and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that the ſaid John earl of Wigtoun afterwards, to wit, on the twelfth day of June, in the year of Our Lord 1690, to wit, at Weſtminſter aforeſaid, died, leaving lawful iſſue John Fleming, his ſon and heir, and alſo Alexander Fleming, a younger ſon of the ſaid John earl of Wigtoun, upon the death of which ſaid John earl of Wigtoun the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid John the ſon and heir, who thereupon then and there became and was ſecond earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the ſixteenth day of June, in the year of Our Lord 1650, to wit, at Weſtminſter aforeſaid, the ſaid John the ſecond earl of Wigtoun died, leaving lawful iſſue,

John Fleming his ſon and heir; upon whoſe death the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid John the ſon, who thereupon then and there became and was third earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the third day of July, in the year of Our Lord 1664, to wit, at Weſtminſter aforeſaid, the ſaid John third earl of Wigtoun died, leaving lawful iſſue, John Fleming his ſon and heir, and alſo William Fleming, a younger ſon of the ſaid John third earl of Wigtoun; upon the death of which ſaid John third earl of Wigtoun, the ſaid earldom, with all the dignities and privileges thereunto belonging deſcended and came to the ſaid John the ſon, who thereupon then and there became and was fourth earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the fifth day of July, in the year of Our Lord 1668, to wit, at Weſtminſter aforeſaid, the ſaid John fourth earl of Wigtoun died without iſſue male, upon whoſe death the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid William Fleming, who thereupon then and there became and was fifth earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the third day of November, in the year of Our Lord 1684, to wit, at Weſtminſter aforeſaid, the ſaid William fifth earl of Wigtoun, died, leaving lawful iſſue, John Fleming his ſon and heir, and alſo Charles Fleming, a younger ſon of the ſaid William ſixth earl of Wigtoun, upon the death of which ſaid William fifth earl of Wigtoun the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid John the ſon and heir, who thereupon then and there became and was ſixth earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the ſixth day of November, in the year of Our Lord 1743, to wit, at Weſtminſter aforeſaid, the ſaid John the ſixth earl of Wigtoun died without iſſue male, upon whoſe death the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid Charles Fleming, who thereupon then and there became and was ſeventh earl of Wigtoun; and the ſaid Hamilton Fleming earl of Wigtoun further ſays, that afterwards, to wit, on the twenty-fifth day of November, in the year of Our Lord 1747, to wit. at Weſtminſter aforeſaid, the ſaid Charles ſeventh earl of Wigtoun died, without leaving iſſue male, upon whoſe death the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to Charles Roſs Fleming, as only ſurviving heir male of, and lawfully and lineally deſcended from the ſaid Alexander, ſon of the ſaid John firſt earl of Wigtoun; which ſaid Charles Roſs Fleming thereupon then and there became and was eighth earl of Wigtoun: And the ſaid Hamilton Fleming, earl of Wigtoun, further ſays, that afterwards, to wit, on the twenty-eighth day of November, in the year of Our Lord 1768, to wit, at Weſtminſter aforeſaid, the ſaid Charles Roſs,

eighth

eighth earl of Wigtoun, died, upon whoſe death the ſaid earldom, with all the dignities and privileges thereunto belonging, deſcended and came to the ſaid Hamilton Fleming, who then and there became and was, and now is earl of Wigtoun; and this he the ſaid H. F. earl of W. is ready to verify: wherefore, inaſmuch as the ſaid H. F. earl of W. is not ſued by original writ, and by his name and dignity of H. F. earl of W. he prays judgment, and that the ſaid bill may be quaſhed. THO. BARKOW.

In the King's Bench, between { WM. BLACKMORE, Plaintiff. AND The Right Honourable HAMILTON FLEMING, commonly called EARL of WIGTOUN, Defendant.

Hamilton Fleming, earl of Wigtoun, impleaded in this ſuit by the name of the right honourable Hamilton Fleming, commonly called earl of Wigtoun, maketh oath and ſaith, that the plea hereto annexed is true in ſubſtance and matter of fact. Sworn, &c.

COVENANT

COVENANT

ON

ARTICLES OF AGREEMENT *.

Declaration at the ſuit of *ſurviving truſtees*, for not paying a proportion of ſubſcription money towards defraying the expence of *defending actions*, &c. for the purpoſe of eſtabliſhing a right of fiſhery.

LANCASHIRE, *ſſ.* John Rawlinſon, &c. &c. complains of James Machell being in the cuſtody, &c. in a plea of breach of covenant: for that whereas, by certain articles of agreement indented, made, concluded, and fully agreed upon the twenty-ſixth day of May, A. D. 1781, at Lancaſter, in the ſaid county of L. between the ſaid John Rawlinſon, &c. &c. and one John Rawlinſon the younger ſince deceaſed, of the firſt part, and one Iſaac Bickett, the ſaid James Machell, one, &c. one, &c. and the ſeveral perſons whoſe hands and ſeals were, and are to the ſaid articles of agreement ſubſcribed and ſet of the ſecond part (which ſaid (1) articles of agreement, ſealed with the ſeal of the ſaid James Machell, and bearing date the day and year aforeſaid, they the ſaid John Rawlinſon, &c. now bring into court here), reciting that William Bradſhaw, of Halton, in the ſaid county of L. claimed the ſole and excluſive right to the fiſhery in the river Loyne, otherwiſe called Lune, from Hatton aforeſaid, to Scale-ford, within the town of L. aforeſaid; and that the ſeveral perſons, parties to the ſaid articles of agreement, apprehended that the ſaid William Bradſhaw had not a ſole and excluſive right to the ſaid fiſhery, but that all his Majeſty's liege ſubjects of this realm had a right to take fiſh in the ſaid river Loyne, otherwiſe Lune, within the flux and reflux of the tide, by all ways and means whatſoever, the ſame river being an arm of the ſea; and that they the ſaid ſeveral perſons, parties to the ſaid (2) articles of agreement, had mutually agreed to proſecute and defend ſuch their right of taking fiſh within the ſaid river Loyne, otherwiſe, &c. within the limits of the flux and reflux of the tide, and to that end the ſaid ſeveral perſons, parties to the ſaid (3) articles of agreement of the ſecond part, had requeſted the ſaid John Rawlinſon, &c. and J. R. the younger deceaſed, in his lifetime, parties to the ſaid articles of agreement of the firſt part, to be managers and directors in the proſecuting, carrying on, and defending of any action or actions, ſuit or ſuits, ſteps or proceedings to be brought, commenced, or carried on upon the account aforeſaid, to which they had con-

(1) "laſt-mentioned"

(2) "laſt-mentioned"

(3) "laſt-mentioned"

* See Covenant on Indentures of Apprenticeſhip and on Leaſes, *poſt*.

ſented

ſented the ſaid (1) articles witneſſed, that the ſaid Iſaac Bickett, the ſaid James Machell, &c. &c. and the ſeveral other perſons, parties to the ſaid (2) articles of agreement of the ſecond part, whoſe hands and ſeals were and are thereunto ſubſcribed, and ſet in purſuance of the ſaid agreement on their parts, and for the purpoſes above, and in the ſaid (3) articles after mentioned, did, by the ſaid (4) articles of agreement, for themſelves ſeverally and not jointly, nor the one of them for the others or other of them, but each one for himſelf and herſelf, and for his and her own heirs, executors and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid John Rawlinſon, &c. and the ſaid J. R. deceaſed, their heirs, executors, and adminiſtrators, that they the ſaid Iſaac Bickett, the ſaid James Machell, &c. &c. and the ſeveral other perſons, parties to the ſaid articles of agreement on the ſecond part, their ſeveral and reſpective heirs, executors, or adminiſtrators, ſhould and would, from time to time, and at all times when and as often as need or occaſion ſhould require, well and truly pay, or cauſe to be paid into the hands of the ſaid John Rawlinſon, &c. their heirs, executors, or adminiſtrators, or to ſuch perſon or perſons as they or a majority of them ſhould nominate, direct, or appoint to collect and receive the ſame, the whole, or a full and equal ſhare of the ſeveral ſums of money ſubſcribed and ſet oppoſite to their reſpective names, in proportion to the ſeveral ſums of money ſubſcribed by them as aforeſaid, to be paid, expended, laid out, and applied in or about the proſecuting, defending, or carrying on of any action or actions, ſuit or ſuits, or other ſteps or proceedings either at law, or in equity, or otherwiſe, for the purpoſe of eſtabliſhing, aſſerting, or maintaining the right of them and every of them in and to the ſaid fiſhery, all which ſum or ſums the ſaid John Rawlinſon, &c. and their heirs, executors, and adminiſtrators or aſſigns, were by the ſaid (5) articles of agreement impowered and authorized to diſburſe, lay out, and to lay out and pay, and to proſecute, defend, and carry on ſuch action or actions, ſuit or ſuits, or other ſteps or proceedings with effect; and the ſaid John R. &c. did thereby, for themſelves ſeverally, and for their ſeveral and reſpective executors, adminiſtrators, and ſucceſſors, covenant, promiſe, and agree, to and with the ſaid Iſaac Bickett, the ſaid James M. &c. and the ſaid ſeveral other perſons, parties thereto, on the ſecond part, that they the ſaid J. R. &c. ſeverally, and their ſeveral and reſpective heirs, executors, and adminiſtrators, ſhould and would, from time to time, and at all times when and ſo often as need or occaſion ſhould require, well and truly bear, pay, and apply the whole, or a full and equal ſhare of the ſeveral ſums of money ſubſcribed and ſet oppoſite to their reſpective names, in proportion to the ſeveral ſums of money ſubſcribed by them as aforeſaid, for the purpoſe of proſecuting, defending, or carrying on of any action or actions, ſuit or ſuits, or other ſteps or proceedings either at law or in equity, or otherwiſe, in order to eſtabliſh, aſſert, and

(1) "laſt-mentioned"
(2) "laſt-mentioned"
(3) "laſt-mentioned"
(4) "laſt-mentioned"
(5) "laſt-mentioned"

(a) See *Aſſumpſit*, Vol III. p. 11. Expenſes of *Joint* Actions.

main-

maintain the right of them and every of them in and to the said fiſhery, as by the ſaid (1) articles of agreement (amongſt other things) more fully appears: And the ſaid J. R. &c. further ſay, that the ſaid James did, at the time of his ſealing and delivering the aforeſaid (2) articles of agreement, to wit, on the twenty-ſixth day of May A. D. 1781, at L. aforeſaid, ſubſcribe and ſet his hand and name to the ſaid (3) articles, and did alſo then and there ſubſcribe and ſet oppoſite to his name ſo ſubſcribed, and ſet on the ſaid articles of agreement the ſum of twenty-one pounds, as and for the amount of his ſubſcription money for the purpoſes in the ſaid (4) articles of agreement (5) *in that behalf mentioned:* And the ſaid John R. &c. in fact further ſay, that after the making of the ſaid (6) articles of agreement, and after the ſaid James had ſigned, ſubſcribed, and executed the ſame, and became ſuch ſubſcriber as (7) aforeſaid, and before the exhibiting of this bill, to wit, in Eaſter term, in the twenty-ſecond year (8) *of the reign of our lord the now king*, the ſaid William Bradſhaw in the ſaid (9) articles of agreement named, ſo claiming the ſole and excluſive right to the ſaid fiſhery in the ſaid river Loyne, otherwiſe Lune, within the limits in the ſaid articles mentioned, commenced, and proſecuted in the court of our ſaid lord the king before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the county of Middleſex), a certain action at law againſt the ſaid *Edward Saliſbury* (one of plaintiffs), one, &c. one, &c. one, &c. and one, &c. for certain treſpaſſes alledged by the ſaid William Bradſhaw to have been committed by them in fiſhing in the ſaid fiſhery in the ſaid articles of agreement ſo claimed by him the ſaid William Bradſhaw as therein mentioned: And thereupon the ſaid John R. &c &c. and the ſaid J R. deceaſed, in his lifetime, and the ſaid John R. &c. &c. after the death of the ſaid J. R. did, according to the effect, true intent and meaning of the ſaid (10) articles, and for the purpoſe of eſtabliſhing, aſſerting, and maintaining the right of the ſaid E. Saliſbury, and of the ſaid ſeveral other parties to the ſaid (11) articles in and to the ſaid fiſhery, accordingly to the ſaid articles, defend and try, and cauſed to be defended and tried the ſaid action ſo commenced and proſecuted by the ſaid W. Bradſhaw as (12) aforeſaid, to wit, at, &c. aforeſaid *And the ſaid John R. &c. &c. further ſay, that by reaſon of the premiſes, and according to the effect of the ſaid articles, the ſaid John Rawlinſon, &c. after the death of the ſaid J. R. had occaſion, and became entitled to collect and receive from the ſaid James and the ſeveral other perſons, parties to the ſaid articles of the ſecond part, whoſe hands and ſeals were thereunto ſubſcribed and ſet as aforeſaid, a certain ſhare and proportion of the ſeveral ſums of money by them reſpectively ſubſcribed and ſet oppoſite to their reſpective names as aforeſaid, to be paid, expended, laid out, and applied by the ſaid John R. &c. in diſcharging and defraying the coſts and expences of defending the ſaid action as aforeſaid; and that the equal ſhare of the ſaid James of the ſaid ſum of money ſo ſubſcribed, and ſet oppoſite to his name as aforeſaid, in pro-*

(1) "laſt mentioned"
(2) "laſt-mentioned"
(3) "laſt-mentioned"
(4) "laſt-mentioned"
(5) "ſpecified"
(6) "laſt-mentioned"
(7) "laſt"
(8) "aforeſaid"
(9) "laſt-mentioned"
(10) "laſt-mentioned"
(11) "laſt mentioned"
(12) "laſt"

proportion to the ſeveral ſums of money ſubſcribed by the ſaid parties to the ſaid articles as aforeſaid, and which was due and payable from him by virtue of the ſaid articles, for and towards the payment of the ſaid coſts and expences of defending the ſaid action as aforeſaid, amounted to a large ſum of money, to wit, the ſum of fifteen pounds fifteen ſhillings, to wit, at L. aforeſaid: And that thereupon the ſaid John R. &c. afterwards, and after the death of the ſaid J. R. the younger, and before the exhibiting, &c. to wit, on the firſt of November 1783, at L. aforeſaid, nominated, directed, and appointed *one* (1) James Parkinſon, gentleman, to collect and receive the ſaid laſt mentioned ſum of money from the ſaid James Machell; of all which ſaid premiſes the ſaid James Machell afterwards, to wit, on the ſame day and year aforeſaid laſt-mentioned, there had notice; and by reaſon of the ſaid premiſes, and according to the tenor and effect of the ſaid (2) articles, the ſaid James M. then and there became liable to pay, and ought to have paid into the hands of the ſaid John R. &c. &c. after the death of the ſaid J. R. the younger, or to the ſaid James Parkinſon, after ſuch nomination, direction, and appointment as (3) aforeſaid, for the purpoſes in the ſaid (4) articles mentioned, the ſaid ſhare and proportion of the ſaid (5) *money ſo ſubſcribed by the ſaid James M. as aforeſaid*; and although the ſaid John R. &c. &c. and J. R. the younger, in his lifetime of the ſaid J. R. the younger, and the ſaid J. R. &c. &c. ſince the death of the ſaid J. R. the younger, have, and each and every of them hath always, from the time of the making of the ſaid (6) articles of agreement, hitherto done and performed every thing in the ſaid (7) articles of agreement contained on their part and behalf to be done and performed; yet proteſting that the ſaid James M. hath not done or performed any thing in the ſaid (8) articles of agreement contained on his part and behalf to be done and performed: the ſaid John R. &c. &c. in fact ſay, that the ſaid James M. hath not paid or cauſed to be paid into the hands of the ſaid John R. &c. &c. the younger, or any of them, in the lifetime of the ſaid J. R. the younger, or to the ſaid John R. &c. &c. or any of them, ſince the death of the ſaid J. R. the younger, or to the ſaid James Parkinſon, ſince the ſaid (9) nomination, direction, and appointment, or to any perſon or perſons whomſoever nominated, directed, or appointed to collect or receive the ſame, in purſuance of the ſaid articles, the ſaid laſt-mentioned ſum of money, or any part thereof, or any part, ſhare, or proportion of the ſaid ſum of money ſo (10) *ſubſcribed by him as aforeſaid*, although the ſaid James M. after the (11) nomination, direction, and appointment of the ſaid James Parkinſon, to wit, on the firſt day of November, A. D. 1783, and often afterwards, at L. aforeſaid, was requeſted by the ſaid J. Parkinſon to pay into his hands the ſaid (12) ſhare and proportion of the ſaid James M. of the ſaid ſum of money ſo (13) *ſubſcribed by him as aforeſaid*; and although the ſaid James M. hath, ſince the death of the ſaid J. R. the younger, often been requeſted by the ſaid J. R. &c. &c. to pay to them his ſaid (14) ſhare

(1) "the ſaid"

(2) "laſt-mentioned"

(3) "laſt"

(4) "laſt-mentioned"

(5) James M. of the ſaid money ſo laid out and diſburſed as aforeſaid, in reſpect to the ſaid ſum of 21*l* ſo by him ſet and ſubſcribed, and upon ſaid laſt-mentioned articles as aforeſaid, not exceeding the ſaid ſum of 21*l*

(6) "laſt mentioned"

(7) "laſt mentioned"

(8) "laſt-mentioned"

(9) "laſt-mentioned"

(10) "laid out and diſburſed as laſt aforeſaid"

(11) "ſaid laſt-mentioned"

(12) "laſt-mentioned"

(13) "laid out and expended as laſt aforeſaid"

(14) "laſt-mentioned"

(1) "laid out and expended as laſt aforeſaid"

ſhare and proportion of the ſame ſum of money *ſo* (1) *ſubſcribed by him as aforeſaid*, but to pay the ſame to or into the hands of the ſaid J. R. &c. &c. and J. R. the younger, in his lifetime, or to any of them, or to or into the hands of the ſaid J. R. &c. &c. or any of them, ſince his deceaſe, or to or into the hands of the ſaid James Parkinſon, the ſaid James M. hath hitherto wholly always refuſed, and ſtill refuſes to pay the ſame to or into the hands of the ſaid J. R. &c. &c. (2) contrary to the form and effect of the ſaid (3) articles of agreement, and the covenant of the ſaid James M. in that behalf made as aforeſaid, to wit, at L. aforeſaid, *whereby they the ſaid J. R. &c. &c. have been obliged to advance, lay out, diſburſe, expend, and pay the amount of the ſaid ſhare or proportion of the aforeſaid ſubſcription of him the ſaid James M. ſo required and wanted as aforeſaid out of their own proper money, to wit, at L. aforeſaid:* And whereas, by certain other articles of agreement indented, &c. (as in firſt Count, inſerting what is in the margin till you come to what is in Italic, in page 300, *fig.* (12.) and omitting what is in Italic, in the ſame page, ſubſtitute the following): "and on that "occaſion, and by reaſon of the premiſes, did neceſſarily lay "out, expend, and pay divers ſums of money, in the whole a-"mounting to a large ſum of money, to wit, the ſum of three "hundred and forty-four pounds ſix ſhillings and ſixpence of law-"ful, &c. and that the equal ſhare of the ſaid James M. of the "ſaid ſum of money ſo laid out and expended as laſt aforeſaid, in "reſpect of the ſaid ſum of twenty-one pounds ſo by him ſub-"ſcribed and ſet oppoſite to his name upon the ſaid laſt-mention-"ed articles of agreement as aforeſaid, and which was due and "payable from the ſaid James M. by virtue of the ſaid laſt-men-"tioned articles, amounted to a large ſum of money, to wit, the "ſum of fifteen pounds fifteen ſhillings, to wit, at Lancaſter "aforeſaid;" (then proceed as in the firſt Count, from the Italic, page 300, to the end of the firſt Count, omitting all that is in Italic, and inſerting all that is in the margin): And the ſaid J. R. &c. &c. ſay, that the ſaid James M. (although often requeſted ſo to do) hath not kept with them the covenants by him made with them and the ſaid J. R. deceaſed as aforeſaid; but hath broken the ſame, and to keep the ſame with them the ſaid J. R. &c. &c. or any or either of them, hath hitherto wholly refuſed and ſtill doth refuſe, to the damage of the ſaid J. R. &c. &c. of fifty pounds; and therefore they bring their ſuit, &c.

(2) "and the ſame, and every part thereof, is ſtill wholly unpaid"

(3) "laſt-mentioned"

2d Count.

A. CHAMBRE.

Declaration, by maſter againſt his apprentice, on a covenant not to exerciſe his trade within ten miles of his maſter's reſidence.

WORCESTERSHIRE, *ſſ.* William Loveridge complains of Richard Doughty being, &c. of a plea of breach of covenant; for that whereas by certain articles of agreement, indented, made, and agreed upon the eighteenth of October A. D. 1774, at Worceſter, in the ſaid county of Worceſter, between one Thomas

Breach that he did.

Doughty

Doughty and the ſaid Richard of the firſt part, and the ſaid William of the other part (the counterpart of which ſaid articles, ſealed with the ſeal of the ſaid Richard, the ſaid William now brings into court, the date whereof is the ſame day and year aforeſaid); the ſaid William, in conſideration of the ſum of one hundred guineas to be paid as thereinafter was mentioned, covenanted and agreed with the ſaid Thomas D. his executors, adminiſtrators, and aſſigns, that he the ſaid William ſhould and would, as far as in him lay, within the time and ſpace of two years from the date of the ſaid articles, if the ſaid Richard ſhould ſo long live, or continue with the ſaid William, teach and inſtruct, or cauſe the ſaid Richard to be taught and inſtructed by the beſt ways and means he could in the ſcience and buſineſs or occupation of a cutter or ſow-gelder, in all things belonging to the ſame buſineſs which the ſaid William then uſed: And the ſaid Thomas D. did, by the ſaid articles of agreement, covenant, promiſe, and agree, to and with the ſaid William, that he the ſaid Richard ſhould andwould dwell with, and faithfully and truly ſerve the ſaid Richard in his ſaid buſineſs during the ſaid time of two years, which he the ſaid Richard did thereby conſent and agree to do accordingly, and that he the ſaid William ſhould have all the benefit of the ſaid ſervice during the ſaid term; and the ſaid R. did, in and by the ſaid articles, for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree, to and with the ſaid William, his executors and adminiſtrators, that the ſaid Richard ſhould not nor would, after his leaving or quitting the ſervice of his ſaid maſter (without firſt having obtained his conſent and approbation for ſo doing), follow or exerciſe the ſaid ſcience, buſineſs, or occupation of a cutter or ſow-gelder within the ſpace of ten miles from the city of Worceſter during the life of the ſaid William, or ſo long as he ſhould continue in and follow the buſineſs of a cutter or ſow-gelder as aforeſaid, as by the ſaid articles (amongſt other things) more fully appears: And the ſaid William in fact ſays, that the ſaid Richard, on the day of the date of the ſaid articles, at, &c. aforeſaid, entered and was received into the ſervice of the ſaid William under the ſaid articles, and ſo remained and continued from thence until the end and expiration of the ſaid term of two years therein mentioned, when his ſaid ſervitude or apprenticeſhip under the ſaid articles, ceaſed, ended, and determined, and he the ſaid Richard left and quitted the ſervice of his ſaid maſter the ſaid William, to wit, at, &c. aforeſaid: And the ſaid William in fact ſaith, that although he the ſaid William hath always, ſince the ſaid Richard ſo left and quitted his ſervice as aforeſaid, hitherto continued in and followed his ſaid buſineſs of a cutter or ſow-gelder as aforeſaid; yet the ſaid Richard, after he ſo left and quitted the ſervice of the ſaid William as aforeſaid, and whilſt the ſaid William continued in and followed the ſaid buſineſs of, &c. as aforeſaid, to wit, on the firſt of January 1780, did follow and exerciſe, and always from thence hitherto hath followed and exerciſed, and ſtill doth follow and exerciſe the Breach.

ſaid ſcience, buſineſs, or occupation of, &c. within ten miles from the city of Worceſter, that is to ſay, at, and in the ſaid city of Worceſter, and in divers other places within ten miles of the ſaid city, without firſt having obtained the conſent or approbation of the ſaid William for ſo doing, contrary to the tenor and effect, true intent and meaning of the ſaid articles of agreement, and the ſaid covenant of him the ſaid Richard in that reſpect made as aforeſaid, whereby the ſaid William hath loſt and been deprived of great profit, benefit, and advantage that would have ariſen and accrued to him from the exerciſe of his ſaid trade and buſineſs of a cutter and ſow-gelder within the limits aforeſaid, if the ſaid Richard had not followed and exerciſed the ſame within ſuch limits, and in manner aforeſaid, to wit, at, &c. aforeſaid; and ſo the ſaid William ſaith, that the ſaid Richard (although often requeſted) hath not kept his ſaid covenant ſo by him made with the ſaid William as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid William hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid William of two hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c. W. BALDWIN.

In the Exchequer.

Declaration by *Foreman* to a tobacconiſt againſt his *maſter* for diſmiſſing him their ſervice before the end of his term, and for not paying him his *wages*.

CITY OF BRISTOL, AND COUNTY OF THE SAME CITY. } FOR that whereas by certain articles of agreement, indented, made, concluded, and agreed upon, the twenty-fourth day of December, A. D. 1782, at and in the city of Briſtol, in the county of the ſame city, between the ſaid (*a*) Matthew of the one part, and the ſaid James and Richard (*b*) of the other part, (which ſaid articles of agreement, ſealed with the reſpective ſeals of them the ſaid James and Richard, and bearing date the day and year laſt aforeſaid, the ſaid Matthew now brings here into court); he the ſaid Matthew for the conſiderations thereinafter mentioned, did, for himſelf, his executors and adminiſtrators, covenant, promiſe and agree to and with the ſaid James and Richard, their executors and adminiſtrators, in manner following: that is to ſay, that he the ſaid Matthew ſhould and would on or before the ſixth day of January, then next enſuing, enter into and continue, and well, truly, diligently, and faithfully, to the beſt of his ſkill, judgment, and capacity, ſerve them the ſaid James and Richard in the ſtation or capacity of a foreman, manager, or ſuperintendant in the trade or buſineſs of a tobacconiſt and ſnuff manufacturer, in all its branches, (which ſaid trade and buſineſs they the ſaid James and Richard were about to embark in upon their joint or partnerſhip account), for and during and unto the full end and term of twelve years, to be computed from the ſaid ſixth day of January then enſuing, and ſhould and would do and perform during the ſaid term, all and every act, deed, or thing relating to the ſaid trade and buſineſs in the beſt manner he was able, and during the

(*a*) plaintiff. (*b*) defendants.

ſaid

ſaid term continue with and work, and follow and attend the trade or buſineſs aforeſaid, for the ſaid James and Richard during the hours, times, and ſeaſons that were cuſtomary and uſual in the ſaid trade; and alſo that the ſaid Matthew ſhould not nor would at any time during the ſaid term, commit or be guilty of any fraud or embezzlement of the monies, goods, wares, or merchandizes of the ſaid James or Richard, or either of them, or for which he ſhould or might be accountable, or wherewith he the ſaid Matthew ſhould or might be entruſted, or which ſhould come to his hands and poſſeſſion; and alſo ſhould not during the ſaid term be concerned in or carry on, or cauſe or procure to be carried on the ſaid trade or buſineſs of a tobacconiſt and ſnuff manufacturer, or any of the branches thereof, either upon his own ſeparate account, or jointly with any other perſon or perſons whomſoever, or in any other way or manner whatſoever, nor ſhould nor would at any time or times during the ſaid term hire or employ any perſon or perſons as a ſervant or ſervants in or to the ſaid trade or buſineſs, nor diſmiſs or diſcharge any perſon or perſons when taken into and employed in the ſervice of the ſaid James and Richard in the trade or buſineſs aforeſaid, without the expreſs approbation and direction of the ſaid James and Richard for that purpoſe, upon any account or pretence whatſoever: And further, that he the ſaid Matthew ſhould and would from time to time, and at all times during the ſaid term, diſcloſe, explain, and make known unto them the ſaid James and Richard, their executors and adminiſtrators, in the beſt way and manner that he was capable of, the art, trade, or myſtery of a tobacconiſt, and in the making and manufactory of ſnuff, and all matters incident or relating to the ſaid trade or buſineſs; and the ſaid James and Richard in conſideration of ſuch ſervice by the ſaid Matthew to be done and performed as aforeſaid, did, and each of them by the ſaid articles of agreement for themſelves and himſelf, and his and their executors and adminiſtrators (among other things) did covenant, promiſe and agree to and with the ſaid Matthew, his executors and adminiſtrators, that they the ſaid James and Richard ſhould and would during the ſaid term, well and truly pay, or cauſe to be paid unto the ſaid Matthew the ſum of one pound one ſhilling per week, weekly and every week as the ſame ſhould grow due and payable, as by the ſaid articles of agreement (reference being thereto had, will, among other things, more fully appear); and the ſaid Matthew in fact ſaith, that the ſaid articles of agreement being ſo made, he the ſaid Matthew did upon the ſaid ſixth day of January, A. D. 1783, at and in the city and county aforeſaid, enter, and he was then and there received into the ſervice of the ſaid James and Richard, to ſerve them under and upon the terms of the ſaid articles of agreement, and he the ſaid Matthew ſo from thence hitherto hath remained and continued, to wit, at the city of Briſtol aforeſaid, in the county of the ſame city; and the ſaid Matthew further ſaith, that although he the ſaid Matthew hath always ſince his entering into the ſaid ſervice of the ſaid James and Richard as aforeſaid, ſerved them the ſaid James and Richard, and

behaved and conducted himſelf, and done and performed, and hath been ready and willing to ſerve the ſaid James and Richard, and to do and perform all things in the ſaid articles of agreement contained on his part and behalf, according to the tenor, effect, and meaning of the ſaid articles of agreement, to wit, at, &c.: Yet proteſting that the ſaid James and Richard have not, nor hath either of them, performed or fulfilled any thing in the ſaid articles of agreement contained on their part and behalf to be performed and fulfilled, he the ſaid Matthew in fact ſaith, that although (*a*) of the ſaid weekly ſum of one pound one ſhilling in the ſaid articles of agreement mentioned, for weeks of the ſaid term of twelve years in the ſaid articles mentioned, ended on the day of , in the year 1783 aforeſaid, at, &c. aforeſaid, grew and become due and payable from the ſaid James and Richard to the ſaid Matthew under and by virtue of the ſaid articles; yet the ſaid James and Richard did not, nor did either of them then and there, or at any other time whatſoever, pay the ſaid ſum of pounds, or any part thereof to the ſaid Matthew; but then and there wholly refuſed and neglected ſo to do, and ſuffered and permitted the ſame to become and be, and the ſame was and ſtill is wholly in arrear, due, owing, and unpaid, from the ſaid James and Richard to him the ſaid Matthew, contrary to the tenor and effect, true intent and meaning of the ſaid articles, and the covenant of them the ſaid James and Richard ſo by them in this behalf made as aforeſaid, to wit, at, &c. aforeſaid: And whereas by certain other articles of agreement indented, made, concluded, and agreed upon the ſaid twenty-fourth day of December, in the year 1782 aforeſaid, at, &c. aforeſaid, between (&c. as in the firſt Count to the end of the recital of the articles of agreement), as by the ſaid laſt-mentioned articles of agreement (reference being thereunto had), will (amongſt other things) more fully appear; and the ſaid Matthew in fact ſaith, that the ſaid laſt-mentioned articles of agreement being ſo made as aforeſaid, he the ſaid Matthew did, upon the ſaid ſixth day of January next enſuing the making of the ſaid laſt-mentioned articles, that is to ſay, the ſixth day of January, in the year 1783 aforeſaid, at, &c. aforeſaid, enter, and he was then and there received into the actual ſervice of the ſaid James and Richard, to ſerve them under and upon the terms of the ſaid laſt-mentioned articles of agreement; and he the ſaid Matthew remained and continued in ſuch ſervice from thence for a long time, to wit, until and upon the day of , in the year 1783 aforeſaid, when they the ſaid James and Richard, without any juſt or reaſonable cauſe whatſoever, and againſt the will of him the ſaid Matthew, diſmiſſed and diſcharged him the ſaid Matthew from, and hindered and prevented him from acting in ſuch ſervice, and refuſed to employ, or to permit or ſuffer him to act therein, to wit, at, &c. aforeſaid; and the ſaid Matthew in fact further ſaith, that although he the ſaid Matthew, during ſuch

(*a*) All the money due to plaintiff or thereabouts, ſo as you lay ſufficient, and attend to the calculation.

his actual ſervice as aforeſaid, did ſerve the ſaid James and Richard, and behave and conduct himſelf, and do and perform all things in the ſaid laſt-mentioned articles of agreement contained on his part and behalf, and from the time of their diſmiſſing him as aforeſaid, hitherto hath always been ready and willing, and hath frequently offered to ſerve, and to do and perform all things in the ſaid laſt-mentioned articles contained on his part and behalf, according to the tenor, effect, and meaning of the ſaid laſt-mentioned articles, and would have ſo done, and would ſtill do, had he been thereunto were he not prevented by the ſaid James and Richard, to wit, at, &c. aforeſaid; yet proteſting that the ſaid James and Richard have not, nor hath either of them performed or fulfilled any thing in the ſaid laſt-mentioned articles contained on their part and behalf, he the ſaid Matthew in fact ſaith, that although pounds of the aforeſaid weekly ſum of one pound one ſhilling in the ſaid laſt-mentioned articles mentioned, for weeks of the ſaid term of twelve years in the ſaid laſt-mentioned articles mentioned, ended on the day of , in the year 1783 aforeſaid, did then and there, to wit, on the day and year laſt aforeſaid, at and in the city and county aforeſaid, become due and payable from the ſaid James and Richard to the ſaid Matthew; and although the ſaid James and Richard were then and there requeſted and required by the ſaid Matthew to pay the ſame to him the ſaid Matthew, according to the tenor and effect of the ſaid laſt-mentioned articles, and their aforeſaid covenant ſo by them in that behalf made as aforeſaid; yet the ſaid James and Richard did not, nor did either of them then and there pay the ſaid ſum of pounds, or any part thereof to the ſaid Matthew, but then and there ſuffered and permitted the ſame to become, and the ſame were and ſtill are due, owing, and unpaid from them the ſaid James and Richard to the ſaid Matthew, to wit, at, &c. aforeſaid, contrary to the tenor and effect, true intent and meaning of the ſaid laſt-mentioned articles, and the covenant of them the ſaid James and Richard therein contained, and ſo by them in this behalf made as aforeſaid: And whereas by certain other articles of agreement, &c. (as in the ſecond Count to the end of the recital of the articles), as by the ſaid laſt-mentioned articles, &c. and the ſaid Matthew in fact ſaith, that the ſaid laſt-mentioned articles being ſo made as aforeſaid, he the ſaid Matthew did, upon the ſaid fifth day of January next enſuing the making of the ſaid laſt-mentioned articles, that is to ſay, on the ſixth day of January, in the year 1783 aforeſaid, at and in the city and county aforeſaid, enter, and he was then and there received into the ſervice of the ſaid James and Richard under and upon the terms of the ſaid laſt-mentioned articles; and the ſaid Matthew in fact further ſaith, that although he remained and continued in ſuch ſervice from the time of his entering into the ſame as aforeſaid for a long time, to wit, until and upon the day of in the year 1783 aforeſaid, and did during ſuch ſervice ſerve the ſaid James and Richard, and behave and conduct himſelf, and do and perform all things in the ſaid laſt-mentioned articles contained on his part and

1 Count.

behalf, and although he was then and there ready and willing to remain and continue, and hath always from thence hitherto been ready and willing, and ſtill is ready and willing to be and to continue in ſuch ſervice, and to ſerve the ſaid James and Richard under and upon the terms in the ſaid laſt-mentioned articles of agreement contained, and according to the tenor and effect of the ſame, to wit, on, &c. aforeſaid; yet proteſting that the ſaid James and Richard have not, nor hath either of them done and performed any thing in the ſaid laſt-mentioned articles contained on their part and behalf to be performed and fulfilled; the ſaid Matthew in fact ſaith, that the ſaid James and Richard heretofore, to wit, on the ſaid day of , in the year 1783 aforeſaid, at and in the city and county aforeſaid, without any juſt or reaſonable cauſe whatſoever refuſed, and always from thence hitherto have refuſed, any farther to employ him the ſaid Matthew in their ſervice under the ſaid laſt-mentioned articles, and then and there, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, without any juſt or reaſonable cauſe for ſo doing, and againſt the will of the ſaid Matthew, diſmiſſed and diſcharged him the ſaid Matthew from and out of their ſervice under the ſaid laſt-mentioned articles, and then and there always from thence hitherto have refuſed, and ſtill do refuſe to pay him the weekly ſum of one pound one ſhilling in the ſaid laſt-mentioned articles ſpecified, weekly, or in any other manner whatſoever, or any other ſum of money whatſoever, or to make him any other payment or allowance whatſoever under the ſaid laſt-mentioned articles, contrary to the tenor and effect, true intent and meaning of the ſaid laſt-mentioned articles, and the covenant of the ſaid James and Richard in that behalf; and ſo the ſaid Matthew ſays, that the ſaid James and Richard (although often requeſted) have not, nor hath either of them kept their ſaid covenant ſo by them in form aforeſaid made with him the ſaid Matthew, but have and each of them hath broken the ſame, and to keep the ſame with the ſaid Matthew have hitherto wholly refuſed, and ſtill do refuſe, to the damage of the ſaid Matthew of pounds, whereby he is the leſs able to pay the debts, &c.

V. LAWES.

I was at firſt inclined to have declared for the *penalty* as well as for the wages, under the articles in queſtion, but as there is ſome ground to doubt the goodneſs of ſuch a Count under all the circumſtances of this caſe, and as it is more for the intereſt of the plaintiff to conſider the articles as ſtill continuing, than as determined and at an end, which muſt neceſſarily be the caſe to entitle him to the penalty, ſo I have only declared upon them as being ſtill open; and on this view of them have drawn three Counts: the firſt, as on a ſervice during the time in which the wages are ſaid to have become due, in order to throw the proof of plaintiff's diſcharge upon defendants, in caſe they ſhould put his *abſence* in iſſue, which is not improbable; the ſecond, on the real circumſtances of the caſe, an abſence through defendants own default; and the third, for diſmiſſing him from their ſervice, in caſe there ſhould be a verdict under the wording of the covenant, whether the wages or ſalary are demandable *as ſuch*, no actual ſervice having taken place.

V. LAWES.

FOR

Declaration in B R. against two *house carpenters* for not finishing plaintiff's house within a stipulated time, whereby he was obliged to hire another house for the accommodation of his family.

FOR that whereas, by certain articles of agreement made the twentieth day of July, A. D. 1789, to wit, at Linton, in the county of Kent, between the said John Beard (by the name and addition of John Beard, of Linton, in the county of Kent, yeoman), of the one part, and the said Thomas Joy and Thomas Hones (by the names and descriptions of Thomas Joy, of Cranbrook, in the county of Kent, carpenter, and Thomas Hones, of Cranbrook, in the county of Kent, carpenter), of the other part; which said articles of agreement, sealed with the seals of the said Thomas Joy and Thomas Hones, he the said John now brings here into court, the date whereof is the day and year aforesaid, they the said Thomas Joy and Thomas Hones, for the considerations therein mentioned, did covenant and agree to and with the said John, his heirs, executors, and administrators, that they the said T. J. and T. H. their executors and administrators, should and would, on or before the seventh day of October then next ensuing, in a good workmanlike manner hew, square, cut out, and frame, in the parish of Benenden, in the said county of Kent, a messuage or tenement, of the dimensions of forty-eight feet long and thirty feet wide, and two stories high, and rear the framing of the said house at a place called Lothington, in the parish of Maidstone, in the said county of Kent; which hewing, squaring, cutting, framing, and rearing, should be done at eight shillings and sixpence the square, he the said John finding rough timber, and felling and drawing the same to the pit at Benenden aforesaid, and carrying the said framing to the place wherein it was to be reared, and finding and allowing iron work, nails, and all other materials, as often as occasion should require: And further the said T. J. and T. H. for the considerations therein after mentioned, did covenant and agree to and with the said John, his executors and administrators, that they the said T. J. and T. H. would, on or before the fifth day of April then next ensuing, in good workmanlike manner, do all the window frames, doors, floors, skirting, and finishing work of the said messuage or tenement, he the said John finding and allowing deals, bolts, locks, iron work, nails, and other materials, excepting the mason's work forthwith done after the rearing of the said house; which window frames, &c. was to be fairly valued and appraised by two indifferent persons, one to be chosen by the said John, his heirs, executors, and administrators, and the other by the said Thomas J. and Thomas H. their executors or administrators; and in case they could not agree, the two appraisers were to chuse a third person, whose determination was to be final: And the said John, for himself, his executors and administrators, did, by the said articles, covenant, promise, and agree, to and with the said T. J. and T. H. their executors and administrators, that he the said John, his heirs, executors, or administrators, should and would find and provide the timber, deals, carriage, drawing, and all other materials as often as occasion should require, and also pay the said T. J. and J. H. their executors and administrators, the said sum of eight

ſhillings a[nd] ſixpence the ſquare for framing the ſaid houſe, ſo ſoon as the ſaid houſe ſhould be reared; and alſo pay the ſaid T. J. and T. H their executors and adminiſtrators, for the window-frames, & when, and ſo ſoon a the ſaid houſe ſhould be finiſhed, as the ſame ſhould be fairly valued: And alſo that it ſhould and m[ay] it be lawful to and for the ſaid John B. his heirs or aſſigns, or they ſhould think proper to make any alteration in the ſa[id] building, or in the framing or finiſhing work, or for their or his ſurveyor, at their wills and pleaſures, to give directions for ſuch alterations at any time, provided it were without prejudice to the ſaid T. J. and T. H: And laſtly, the ſaid parties for the true performance of all and every the covenants and agreements in the ſaid articles above mentioned, bound themſelves and their ſeveral heirs, executors, and adminiſtrators, each to the other, in the penal ſum of thirty pounds firmly by the ſaid articles; at the ſame time it was by the ſaid articles agreed, that the ſaid T. J. and T. H. were to have the chips and ends according to the cuſtom of the country, in lieu of beer, as by the ſaid articles of agreement, reference being thereto had, will more fully appear: And the ſaid John in fact ſaith, that although he the ſaid John hath always, from the time of the making of the ſaid articles of agreement hitherto, well and truly performed all things therein contained on his part and behalf to be performed and fulfilled, according to the true intent and meaning thereof, to wit, at the pariſh aforeſaid, in the county aforeſaid: Yet, proteſting that the ſaid T. J. and T. H. have not, nor hath either of them performed and fulfilled any thing in the ſaid articles of agreement contained on their reſpective parts and behalves to be performed, he the ſaid John avers, that although he the ſaid John did, after the making of the ſaid agreement, in purſuance thereof, as often as occaſion required, find rough timber, and did fell and draw the ſame to the pit at Benenden aforeſaid, and alſo carried the framing to the place where to be reared as in the ſaid agreement is mentioned, and as often as occaſion required, found and allowed iron work, nails, and all other materials for the purpoſe in the ſaid agreement mentioned, according to the tenor and effect, true intent and meaning thereof in that behalf, to wit, at the pariſh aforeſaid, in the county aforeſaid, of which ſaid premiſes they the ſaid T. J. and T. H. had due notice: And although the ſaid John, after the making of the ſaid agreement, and before the time limited thereby, for completing the ſaid building, and by the directions of his ſurveyor for that purpoſe appointed, and with the notice and conſent of and without prejudice to the ſaid T. J and T. H. made an alteration in the ſaid building, according to the effect of the ſaid articles, and purſuant to the power therein for that purpoſe given, that is to ſay, by leſſening a little the dimenſions of the ſaid building, to wit, at the pariſh aforeſaid, in the county aforeſaid. Yet the ſaid John avers, that the ſaid Thomas J. and Thomas H. did not, nor did either of them, on or before the ſeventh day of October next, enjoying the making of the ſaid

agreement, and in the ſaid agreement for that purpoſe mentioned, in a good workmanlike manner, hew, ſquare, cut, and frame, and rear the ſaid meſſuage or tenement in the ſaid agreement mentioned, either according to the terms of the ſaid agreement or ſubject to the ſaid alterations in the dimenſions thereof, in and by the ſaid agreement authoriſed and herein before ſtated to have been made in purſuance thereof; but on the contrary thereof they the ſaid T. J. and T. H. then and there failed and made default in performance of the ſaid agreement in the particulars laſt above mentioned, contrary to the tenor and effect of the ſaid agreement, and of the covenant of the ſaid T. J. and T. H. therein for that purpoſe in that behalf contained as aforeſaid, and in breach and violation thereof, to wit, at the pariſh aforeſaid, in the county aforeſaid: And the ſaid John in fact further ſays, that although he the ſaid John did, after the making of the ſaid agreement, duly find and allow cheſts, locks, bolts, iron work, nails, and all other materials, and got the maſon's work done for the doing of the window-frames, &c. of the ſaid meſſuage or tenement in the ſaid agreement mentioned, according to the tenor and effect, true intent and meaning thereof, in that behalf, to wit, at the pariſh aforeſaid, in the county aforeſaid, of which the ſaid T. J. and T. H. had due notice: Yet they the ſaid T. J. and T. H. did not, on or before the fifth day of April next enſuing the making of the ſaid agreement, in a good workmanlike manner, do all the window-frames, &c. of the ſaid meſſuage or tenement in the ſaid agreement mentioned; but on the contrary thereof then and there therein failed and made default, contrary to the tenor and effect of the ſaid agreement, and of the ſaid covenants of the ſaid T. J. and T. H. in that behalf made as aforeſaid, and in breach and violation thereof; and ſo the ſaid John ſays, that the ſaid T. J. and T. H. have not, nor hath either of them, although often requeſted, &c. kept their ſaid ſeveral covenants ſo made with the ſaid John aforeſaid; but have broken the ſame, and to keep the ſame with the ſaid John have wholly refuſed, and ſtill do refuſe, to the damage of the ſaid John of one hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c.

CASE. The defendants went on with the building, the dimenſions of the houſe being ſtill leſſened a few feet, agreeable to plaintiff's ſurveyor's directions. Defendants did not rear the houſe till ſome months after the 7th of October 1789, and are now about the finiſhing work; but, from their dilatorineſs, will not, in all probability, finiſh it by Chriſtmas next. The plaintiff, the better to accommodate them, hired a houſe to go in with his family till Lady-day laſt, thinking it would be then completed, and ſo continues on till now to his very great diſadvantage, and has from time to time paid defendants ſeveral ſums of money, nearly to the amount of their labour, and cannot prevail on them to get the finiſhing work forward.

OPINION. I have peruſed the agreement, and am of opinion that an act on of debt for the *penalty* may be maintained againſt the defendant for the non-performance of it; or if the penalty is not ſufficient to cover the whole damage ſuſtained, an action of covenant will alſo lie, in which damages to any amount that the plaintiff can prove, may be recovered.—It ſeems to me, that the plaintiff has done all on his part to be performed by the agreement; and the defendants, by their non-performance of their agreement, made it neceſſary for the plaintiff

to hire another houſe, he is entitled to recover by way of damages the rent he is obliged to pay for ſuch houſe, till the building undertaken by them is completed. If, on being applied to, the defendants ſhould refuſe to finiſh the building, I think the plaintiff may ſet others to work upon it, and he will be entitled to add the amount of the price of their labour to his damages, and in ſtrictneſs, the defendants cannot recover any thing for what they have done: but if the defendants chuſe to perſevere in going on with their undertaking, I ſhould doubt how far plaintiff can furniſh it by others and make the defendants pay the expence, eſpecially as he ſeems to have waived all objections to the non-performance of the defendant's contract within the time limited by the agreement, by permitting them to go on after that time upon the old terms. The proper way to have diſpoſed of them when the agreement was once broken, would have been to have diſcharged them from proceeding further, and to have finiſhed the building at the plaintiff's own expence. It would then have become a queſtion how the defendants could have been paid for their labour.

T. Barrow.

In the Common Pleas.

Covenant on articles of agreement entered into between the *maſter* and the defendant and other the officers and *ſeamen*, &c. Breach for non payment of *wages*.

MIDDLESEX. William Craig Harborne, mariner, was ſummoned to anſwer John Wiley in a plea that he keep with him the covenants made between them according to the force, form, and effect of certain articles of agreement between them made, &c.: And thereupon the ſaid John W. by Thomas James his attorney ſays, that by certain articles of agreement, indented, made, entered into, and concluded upon and ſealed, with the ſaid William C. H. on the twenty-eighth of Auguſt, A. D. 1787, at Weſtminſter, in the county of Middleſex aforeſaid, between the ſaid W. C. H. (by the name and addition of William Craig Harborne, maſter of the ſhip Toms, of Liverpool), on the one part, and the ſaid John Wiley and other the officers, ſeamen, and mariners, engaging to enter on board the ſaid ſhip for the purpoſes herein after mentioned (by the deſcription of the officers, ſeamen, and mariners, engaging to enter on board the ſaid ſhip), on the other part, for the purpoſes of navigating the ſaid ſhip during her then intended voyage, for which ſhe was then fitting at the port of Liverpool aforeſaid, and in which voyage it was then intended that the ſaid ſhip ſhould ſhortly afterwards proceed to Africa and America, and from thence back to Liverpool aforeſaid, or ſome other port of diſcharge in Great Britain, when the ſaid voyage ſhould be ended, and not ſooner (and which ſaid articles of agreement are either in the poſſeſſion and power of the ſaid William C. H. or caſually loſt or deſtroyed), it was agreed, that for and in conſideration of the ſums advanced, and monthly or other wages and privileges againſt each reſpective officer, ſeaman, or other mariner's name thereunto ſet, they ſeverally ſhould and would immediately repair on board the ſaid ſhip, and perform the above mentioned voyage; and that the ſaid maſter ſhould hire, and the ſaid maſter did by the ſaid articles of agreement hire the ſaid officers, ſeamen, mariners, and others, for the ſaid voyage, at ſuch monthly or other wages and privileges, which ſhould commence on the day the ſaid ſhip ſhould proceed paſt the black rock to ſea, and continue until the ſhip's arrival at her port of diſcharge, when all wages due ſhould be

be paid in thirty days from the time of ſuch arrival, and not ſooner: And it was thereby further agreed, that one half of the wages of each officer, ſeaman, mariners, or others, from the time of the ſaid ſhip's departure from the black rock, and until ſhe ſhould have been one month at her final delivery port in America, ſhould be paid unto the ſaid perſons in the current money of ſuch delivering port, and that each ſhilling of which ſhould be paid and received as if it was ſterling; and that the half wages of all perſons who might die in the courſe of the ſaid voyage ſhould be ſubject to ſuch exchange; and that the ſaid maſter ſhould pay the ſaid wages accordingly; and that if there ſhould be no eſtabliſhed currency at the place of delivery, or if the place of delivery ſhould be on the continent of America, the ſaid half wages ſhould be paid at the rate of forty pounds *per cent*: And although the ſaid J. W. hath, ever ſince the making of the ſaid articles of agreement, well and truly obſerved, performed, fulfilled, and kept all and ſingular the covenants, clauſes, and agreements in the ſaid articles of agreement contained, on his part and behalf to be obſerved, performed, fulfilled, or kept: Yet, proteſting that the ſaid William C. H. hath not well and truly obſerved, performed, fulfilled, or kept any of the covenants, clauſes, or agreements in the ſaid articles of agreement contained, on his part and behalf to be obſerved, performed, fulfilled, and kept; in fact the ſaid J. W. ſaith, that he the ſaid J. W. then and there, to wit on the ſaid twenty eighth of Auguſt in the year aforeſaid, at Weſtminſter aforeſaid, did ſign his name to, and ſeal the ſaid articles of agreement, in order to proceed on board the ſaid ſhip and ſail as a ſeaman or mariner in and on board the ſame, in and during the ſaid intended voyage; and that the ſum of two pounds was then and there inſerted and ſet oppoſite to and againſt the name of him the ſaid J. W. in the ſaid articles of agreement; and that the ſaid ſum of two pounds, ſo inſerted and ſet as aforeſaid, then and there imported, meant, or ſignified to be ſo much money or wages, to be paid by the ſaid William C. H. to him the ſaid J. W. for each and every month during the time which he the ſaid J. W. ſhould ſo ſerve as ſuch ſeaman or mariner in and on board the ſaid ſhip in the voyage, that is to ſay, for and during the whole of the ſaid voyage: And the ſaid J. W. further ſaith, that he the ſaid J. W. afterwards, to wit, on the ſaid twenty-eighth of Auguſt in the year aforeſaid, at the port of Liverpool aforeſaid, did repair and enter on board the ſaid ſhip as ſuch ſeaman or mariner as aforeſaid, as and for ſuch monthly wages in that behalf as aforeſaid, and did duly and faithfully ſerve as ſuch ſeaman and mariner in and on board the ſame, from thence until the wrongful and injurious diſmiſſion and diſcharge herein after mentioned; and that the ſaid J. W. ſo being and remaining in and on board the ſame as aforeſaid, the ſaid ſhip afterwards, to wit, on the ſame day and year aforeſaid, departed and ſet ſail from the port of Liverpool aforeſaid, and afterwards, to wit, on the ſame day and year aforeſaid, proceeded paſt the black rock aforeſaid, in the ſaid articles of

agreement mentioned, to ſea on her ſaid intended voyage, and afterwards, to wit, on the fifteenth of January in the year aforeſaid, and on divers other days and times, as well before as afterwards, arrived at Africa and America aforeſaid, in the ſaid articles of agreement mentioned, and remained and continued in divers ports and places in Africa and America aforeſaid in that voyage for a long time, and until her departure back for the port of Liverpool hereinafter mentioned, to wit, until the firſt of Auguſt, A. D. 1789: And the ſaid J. W. further ſaith, that whilſt he the ſaid J. W. remained and continued in and on board the ſaid ſhip as ſuch ſeaman and mariner as aforeſaid, and during the ſaid voyage, to wit, on the eighteenth of January, A. D. 1788, at Cape Coaſt Caſtle, on the coaſt of Africa, in parts beyond the ſeas, he the ſaid W. C. H. wrongfully and injuriouſly, without any reaſonable or probable cauſe whatſoever, and againſt the will of the ſaid J. W. diſmiſſed and diſcharged him the ſaid J. W. from the ſaid ſhip, and wholly prevented and hindered him the ſaid J. W. from acting or ſerving any longer as ſuch ſeaman and mariner in and on board the ſame, to wit, at Weſtminſter aforeſaid: and that he the ſaid John W. being ſo diſmiſſed and diſcharged as aforeſaid, the ſaid ſhip afterwards and during the ſaid voyage, to wit, on the ſaid firſt of Auguſt, in the ſaid A. D. 1789, departed and ſet ſail from America aforeſaid for and towards this kingdom; and that the ſaid ſhip afterwards, to wit, on the eighteenth of November in the year laſt aforeſaid, arrived back at this kingdom, to wit, at the port of Liverpool aforeſaid, and was then and there diſcharged, and the ſaid voyage was thereby ended and determined, to wit, at Weſtminſter aforeſaid: And the ſaid John W. further ſaith, that during the ſaid voyage, and before the arrival of the ſaid ſhip at Africa and America aforeſaid to wit, on the twenty-eighth of December, in the ſaid year of Our Lord 1787, a large ſum of money, to wit, the ſum of eight pounds of lawful, &c. as and for the monthly wages of him the ſaid J. W. for four months of the ſaid time in that behalf, ending on that day in that year, became and were due, in arrear, and unpaid from the ſaid W. C. H. as ſuch maſter of the ſaid ſhip as aforeſaid, according to the form and effect of the ſaid articles of agreement and of the covenants of the ſaid W. C. H. ſo made as aforeſaid, and although thirty days, from the time of ſuch arrival of the ſaid ſhip back at the port of Liverpool, where ſhe had been ſo diſcharged as aforeſaid, are long ſince elapſed: Yet the ſaid W. C. H. (although often requeſted), to wit, at Weſtminſter aforeſaid, hath not paid to the ſaid John W. the ſaid ſum of eight pounds, or any part thereof; but he ſo to do hath hitherto wholly refuſed and ſtill doth refuſe, and the ſame and every part thereof ſtill remains due, in arrear, and unpaid to the ſaid John, contrary to the form and effect of the ſaid articles of agreement of the ſaid covenant of the ſaid W. C. H. in that behalf made as aforeſaid: And the ſaid John W. further ſaith, that by means of his being ſo wrongfully and injuriouſly diſmiſſed and diſcharged by the ſaid William C. H. from the

ſaid

ſaid ſhip in parts beyond the ſeas, during the ſaid voyage, he the ſaid John W. hath been prevented and hindered from ſerving and acting as ſuch ſeaman and mariner in and on board the ſaid ſhip, for and during the reſidue of the ſaid voyage, that is to ſay, from the ſaid eighteenth of January, A. D. 1788, until the arrival and diſcharge of the ſaid ſhip at Liverpool aforeſaid, as he ought to do and otherwiſe ſhould and would have done, according to the form and effect of the ſaid articles of agreement; and alſo, by means of the premiſes he the ſaid J. W. loſt and was deprived of a large ſum of money, to wit, the ſum of forty-four pounds of like lawful money, which otherwiſe would have ariſen and accrued to him the ſaid John W. as ſuch ſeaman and mariner as aforeſaid, by virtue of the ſaid articles of agreement and of the covenant of the ſaid W. C. H. in that behalf made as aforeſaid, for his ſervice on board the ſaid ſhip for and during the time laſt aforeſaid; and which ſaid wrongful and injurious diſcharge, ſo done and committed by the ſaid William, was and is contrary to the effect and the true intent and meaning of the ſaid articles of agreement, and of the covenant of the ſaid W. C. H. ſo made in that behalf as aforeſaid: And ſo the ſaid John W. ſaith, that the ſaid W. C. H. hath not kept with him the covenants ſo made, between them and hath broken the ſame; and to keep the ſame with the ſaid J. W. hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid J. W. of one hundred pounds; and therefore he brings ſuit, &c.

HARBORNE *at ſuit of* WILEY.

AND the ſaid W. C. H. by John Windus his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the articles of agreement in the ſaid declaration mentioned, are not his deed, and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, as to the ſaid breach of covenant above aſſerted, in the non-payment of the ſaid ſum of eight pounds in the ſaid declaration mentioned, the ſaid W. C. by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, ſays, that the ſaid John ought not to have his aforeſaid action thereof maintained againſt him, becauſe he ſays, that the ſaid John, before and at the time of the commencement of his action at Weſtminſter, was and ſtill is indebted to the ſaid W. C. to a much larger amount than the amount of the damages ſuſtained by the ſaid John, by reaſon of the ſame breach of covenant, *viz.* in the ſum of twenty pounds of lawful money of Great Britain, for divers goods, wares, and merchandizes by the ſaid W. C. before that time ſold and delivered to the ſaid John, at his ſpecial inſtance and requeſt; and in the further ſum of twenty pounds of like lawful money, for money by the ſaid John before that time had received for the uſe of the ſaid William C.; and alſo in the further ſum of twenty pounds of like lawful money, for money by the ſaid William C. before that time paid, laid out, and expended for the uſe of the ſaid

Plea, 1ſt, *non eſt factum.*

2d, *Plea of ſet off.*

For goods ſold and delivered, for money had received, laid out and expended.

ſaid John, at his ſpecial inſtance and requeſt, out of which ſaid ſeveral ſums of money ſo due and owing from the ſaid John to the ſaid William C. he the ſaid William C. is ready and willing, and hereby offers to ſet off and allow to the ſaid John ſo much as will be ſufficient to ſatisfy the amount of the damages ſuſtained by him, by reaſon of the ſame breach of covenant, according to the form of the ſtatute in ſuch caſe made and provided, and this he the ſaid William C. is ready to verify; wherefore he prays judgment if the ſaid John ought to have his aforeſaid action thereof maintained againſt him, &c: And for further plea in this behalf, as to the ſaid breach of covenant above aforeſaid, in the non-payment of the ſaid ſum of eight pounds in the ſaid declaration mentioned, the ſaid William C. by the like leave of the court here for that purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have his aforeſaid action thereof maintained againſt him; becauſe he ſays, it was further agreed by the ſaid articles in the ſaid declaration mentioned, that any perſon or perſons that ſhould mutiny, or endeavour to excite a mutiny, or ſhould ſtrike the ſaid maſter or other principal officer of the ſaid ſhip, or behave in a riotous or diſorderly manner on board the ſaid ſhip, ſhould, beſides the puniſhment inflicted by law, forfeit to the owners of the ſaid ſhip, all the wages then due to any ſuch offender or offenders; and the ſaid William further ſays, that the ſaid John after the departure of the ſaid ſhip from the port of Liverpool, and during her ſaid voyage, to wit, on the eighteenth of January, in the year 1788, behaved in a riotous and diſorderly manner on board the ſaid ſhip, contrary to the form and effect of the ſaid articles, whereby, and by force of the ſaid articles, all the wages then due to the ſaid John became and were forfeited by him to the owners of the ſaid ſhip, to wit, at Weſtminſter aforeſaid; and this the ſaid William is ready to verify: wherefore he prays judgment if the ſaid John ought to have his aforeſaid action thereof maintained againſt him, &c.: And for farther plea in this behalf, as to ſo much of the ſaid declaration as relates to the diſmiſſing and diſcharging of the ſaid John from the ſaid ſhip, and preventing and hindering him from acting or ſerving any longer as a ſeaman, and mariner in and on board the ſame, the ſaid William C. by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid John ought not to have his aforeſaid action thereof maintained againſt him, becauſe he ſays, that the ſaid John, on divers days and times after the departure of the ſaid ſhip from the ſaid port of Liverpool, and during her voyage from thence to the coaſt of Africa in the declaration mentioned, and alſo during her ſtay upon the ſaid coaſt, to wit, on the ſaid eighteenth of January 1788 aforeſaid, behaved in a diſorderly, ſeditious, and mutinous manner on board the ſaid ſhip, and endeavoured to raiſe and excite a mutiny among the other ſeamen on board the ſame; wherefore the ſaid William C. then and there to wit,

Third plea. That it was agreed by the ſaid articles, if any perſon ſhould mutiny, he ſhould forfeit his pay to the owners.

Fourth plea. Diſcharging and diſmiſſing plaintiff, in order to put an end to the mutiny.

wit, on the day and year laſt aforeſaid, at Cape Coaſt Caſtle, in the ſaid declaration mentioned, in order to put an end to the ſaid mutiny, and prevent the further progreſs thereof, and for the ſecurity of the ſaid ſhip and the cargo then on board her, neceſſarily diſmiſſed and diſcharged the ſaid John from the ſaid ſhip, and prevented and hindered him from acting or ſerving any longer as ſuch ſeaman or mariner in and on board the ſame, as he lawfully might for the cauſe aforeſaid; and this he is ready to verify: and therefore he prays judgment if the ſaid John ought to have his aforeſaid action thereof maintained againſt him, &c. J. ADAIR.

Covenant on articles of agreement for non-payment of rent.

MIDDLESEX. Gilbert Sheldon complains of John Hill, otherwiſe, &c. being, &c.; for that whereas by certain articles of agreement made, &c. (*make a profert of the articles, and then recite the demiſe and leſſee's covenant for payment of the rents, and then proceed with a recital of the defendant's covenant for ſecuring the payment thereof, which in effect was to the effect following*): and the ſaid John did in and by the ſaid articles bind himſelf to the ſaid Gilbert [illegible] the true payment of the ſaid yearly rent of fifty two pounds, by the [illegible] Edmund Winter to the ſaid Gilbert Sheldon, at [illegible] the proportions before mentioned for [illegible] as in the ſaid articles of agreement, (Edmund being then ſeiſed (amongſt other things) more fully and at large appears by reference being had to which ſaid articles of agreement the ſaid declaration will more fully appear) the ſaid articles named, after the making thereof to wit, [illegible] the ſaid eighteenth day of April, in the year 1780 aforeſaid, [illegible]t, at Weſtminſter aforeſaid, entered into all and ſingular the ſaid premiſes thereby demiſed, with the appurtenances, [illegible] and was and ſtill is poſſeſſed thereof for the ſaid term to come thereof demiſed as aforeſaid, and the ſaid Gilbert ſaith, that although he the ſaid Gilbert always from the time of the making of the ſaid articles of agreement, hitherto hath well and truly performed and fulfilled all things therein contained, on his part and behalf to be performed and fulfilled, according to the true intent and meaning of the ſaid articles, to wit, at Weſtminſter aforeſaid, yet proteſting that the ſaid John hath not performed or fulfilled any thing in the ſaid articles of agreement contained on his part and behalf to be performed and fulfilled, he the ſaid Gilbert in fact ſaith, that twenty-ſix pounds of the aforeſaid rent of fifty two pounds in the ſaid articles mentioned, and reſerved for one half year of the ſaid term thereby demiſed, ended on the twenty-ninth day of September, in the year 1780 aforeſaid, at and on that day in the year aforeſaid, to wit, at Weſtminſter aforeſaid, became due and in arrear from the ſaid Edmund on the ſaid articles of agreement mentioned, to the ſaid Gilbert, and ſo continued from thence until and at and after the end of the ſaid twenty-ninth day of September, in the year 1780 aforeſaid, contriving to the form and effect of the ſaid articles

of agreement, and the covenant of the ſaid Edward in that behalf made as aforeſaid, whereby the ſaid John according to the tenure and effect of the ſaid articles of agreement, and the covenant of him the ſaid John in that behalf made as aforeſaid, afterwards, and whilſt the ſaid twenty-ſix pounds of the rent aforeſaid were due, owing, in arrear, and unpaid from the ſaid Edmund to the ſaid Gilbert as aforeſaid, to wit, on the twentieth day of September, in the year 1780 aforeſaid, at Weſtminſter aforeſaid, became liable to pay to the ſaid Gilbert the ſaid twenty-ſix pounds of the rent aforeſaid, ſo due, owing, in arrear, and unpaid to him as aforeſaid, whereof the ſaid John afterwards, and before the exhibiting the bill of the ſaid Gilbert, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, had notice; and was requeſted by the ſaid Gilbert to pay him the ſaid twenty-ſix pounds of the rent aforeſaid ſo due and in arrear to him as aforeſaid; but the ſaid Gilbert in fact further ſaith, that the ſaid John did not then and there pay, nor hath he at any time ſince hitherto paid the ſaid twenty-ſix pounds of the rent aforeſaid ſo due and in arrear as aforeſaid, or any part thereof to the ſaid Gilbert, contrary to the tenor and effect of the ſaid articles of agreement, and of the covenant of the ſaid John in that behalf made as aforeſaid, but the ſame are, and every part thereof is ſtill in arrear and unpaid to the ſaid Gilbert, either by the ſaid John or the ſaid Edmund in the ſaid articles of agreement mentioned, to wit, at Weſtminſter aforeſaid; and ſo the ſaid Gilbert ſaith that he the ſaid John hath not kept his ſaid covenant ſo by him made with the ſaid Gilbert as aforeſaid (although often requeſted), but hath broken the ſame, and to keep the ſame with the ſaid Gilbert hitherto wholly refuſed, and ſtill refuſes ſo to do; damages, &c.; and therefore he brings his ſuit, &c.; pledges, &c.

V. Lawes.

Trinity Term, in the eighth year of the reign of king George the Third. Cooke. Heretofore as it appeareth of the term of Eaſter laſt paſt in the ſix hundred and firſt, ſix hundred and ſecond, and ſix hundred and third rolls, it is thus contained:

Bill againſt an attorney of C. B. in covenant on *articles of ſeparation* between defendant and plaintiff, his wife; defendant was to allow plaintiff an annuity; breach for not paying it.

MIDDLESEX to wit. Be it remembered, that on the twenty-ninth day of April, in this ſame term, James Innes came here into court, by Clement Hall, his attorney, and exhibited to the juſtices of our ſaid lord the king here, his certain bill againſt Edmund Lacon, gentleman, one of the attornies of the court of our lord the king of the bench, preſent here in court in his proper perſon, the tenor of which ſaid bill follows in theſe words:—— To the juſtices of our lord the now king of the bench: Middleſex, to wit. James Innes, by Clement Hall, his attorney, complains of Edmund Lacon, gentleman, one of the attornies of our lord the now king of the bench, here preſent here in court in his own proper perſon, of a plea of covenant broken: For that whereas

whereas by a certain indenture made on the third day of March 1767, at Weſtminſter, in the ſaid county of Middleſex, between the ſaid James, by the name and addition of James Innes, of the pariſh of St. James's, Weſtminſter, in the county of Middleſex, eſquire, and a captain in the navy, of the one part; and the ſaid Edmund, by the name and addition of Edmund Lacon, of Gray's-inn, in the ſaid county of Middleſex, gentleman, of the other part, (the one part of which ſaid indenture, ſealed with the ſeal of the ſaid Edmund, the ſaid James now brings into court, the date whereof is the ſame day and year aforeſaid), the ſaid James for and in conſideration of the covenants and agreements thereinafter contained, on the part and behalf of the ſaid Edmund, his executors and adminiſtrators, to be paid, kept, done, and performed, did thereby for himſelf, his heirs, executors and adminiſtrators, covenant, promiſe, and agree to, and with the ſaid Edmund, his executors and adminiſtrators, in manner and form following, that is to ſay, that Sarah Innes, the wife of the ſaid James, and the daughter of him the ſaid Edmund, ſhould and might peaceably and quietly, and without any contradiction, controul, interruption, moleſtation, or diſturbance whatſoever, of, by, or from the ſaid James, or for his order, direction, or procurement, directly or indirectly from time to time, and at all times hereafter, go, live and reſide at ſuch place or places, and in ſuch manner as ſhe ſhould think fit, ſeparate and apart from the ſaid James her huſband: and the ſaid Edmund did for himſelf, his heirs, executors and adminiſtrators, covenant, promiſe, and agree to, and with the ſaid James, his heirs, executors, and adminiſtrators, by the ſaid indenture in manner and form following, that is to ſay, that the ſaid James obſerving, performing, fulfilling, and keeping the ſaid covenants and agreements in the ſaid indenture contained, on his part and behalf to be kept, done, and performed, then the ſaid Edmund, his executors, and adminiſtrators ſhould and would from time to time, and at all times thereafter, during ſuch times as the ſaid James and Sarah his wife ſhould live ſeparate and apart from each other, well and ſufficiently ſave and keep harmleſs and indemnified the ſaid James, his heirs, executors, and adminiſtrators, and his and their lands, goods, chattels, and effects from and againſt the payment of all debts whatſoever, which ſhe the ſaid Sarah Innes had contracted with any perſon or perſons whomſoever, for neceſſaries or otherwiſe, either before her intermarriage with the ſaid James, or ſince the ſeventeenth day of June then laſt paſt, and alſo from and againſt the payment of all ſuch other debt or debts as ſhe the ſaid Innes ſhould or might thereafter contract with any perſon or perſons whatſoever, for neceſſaries or otherwiſe, during ſuch their ſaid ſeparation; and alſo from and againſt all coſts, charges and damages which he the ſaid James, his heirs, executors, or adminiſtrators ſhould or might be compelled by law or equity to pay or ſuſtain, or be put unto for or on account of any ſuch debt or debts which ſhe the ſaid Sarah Innes had contracted, either before her inter-

intermarriage with the ſaid James, or ſince the ſeventeenth day of June then laſt paſt, or ſhould or might thereafter contract during ſuch ſeparation as aforeſaid: and alſo that ſhe the ſaid Sarah Innes ſhould not nor would at any time or times in any wiſe interrupt, diſturb, or trouble the ſaid James in his manner of living, or by following him, or abuſing him by ill language, or otherwiſe howſoever, and that he ſhould and might attend or go about his lawful buſineſs from time to time, peaceably and quietly, without any interruption, moleſtation, or trouble by or from her, or any other perſon or perſons by her order, direction, or procurement in anywiſe howſoever; and moreover that he the ſaid Edmund, his executors and adminiſtrators, ſhould and would well and truly pay, or cauſe to be paid unto the ſaid James, the clear yearly ſum of one hundred pounds, of lawful money of Great Britain, by half yearly payments, namely, on the twenty-fifth day of March, and the twenty-ninth day September, the ſum of fifty pounds, part thereof, being the intereſt of the ſum of one thouſand pounds, for and during the life of the ſaid James, and fifty pounds, reſidue of the ſaid one hundred pounds, during the joint lives of the ſaid Sarah Innes (heretofore Sarah Breton), and to the ſaid Edmund, according to the ſtipulations mentioned in a certain memorandum or agreement of the twenty fourth day of September 1760, made previous to the marriage of the ſaid James and Sarah his wife; in conſideration whereof, and for other conſiderations therein before-mentioned, he the ſaid James for himſelf, his heirs, executors, and adminiſtrators, did thereby covenant, promiſe, and agree to, and with the ſaid Edmund, his executors and adminiſtrators, that it ſhould and might be lawful to and for the ſaid Edmund, his executors and adminiſtrators, to deduct and defalk out of the ſaid yearly ſum of one hundred pounds, the clear yearly ſum of fifty pounds, of like lawful money, to be by him or them paid and applied, during ſuch ſeparation as aforeſaid, for and towards the ſupport and maintenance of the ſaid Sarah Innes, and for her ſole and ſeparate uſe and benefit, and to be paid into her own proper hands, and her receipt in writing to be from time to time ſufficient diſcharge and diſcharges for the ſame, which ſaid yearly ſum of fifty pounds was to commence and be payable unto the ſaid Sarah Innes from Michaelmas day laſt, as by the ſaid indenture more fully appears; and although the ſaid James hath always well and truly obſerved, performed, fulfilled, and kept all and ſingular the covenants, clauſes, and agreements in the ſaid indenture contained, on his part and behalf to be obſerved, performed, fulfilled and kept, yet proteſting that the ſaid Edmund hath not well and truly obſerved, performed, fulfilled, or kept any of the covenants, clauſes, and agreements in the ſaid indenture contained, on his part and behalf to be obſerved, performed, fulfilled, and kept; in fact the ſaid James ſaith, that on the twenty-fifth day of March, in the year of Our Lord 1768, fifty pounds for two half yearly payments of the ſaid yearly ſum of one hundred pounds became due and owing from the ſaid Edmund to the ſaid James; yet the ſaid Edmund, although often requeſted, hath not yet paid the ſaid ſum of fifty pounds, or any part thereof to the ſaid

James

James, but to pay the ſame to the ſaid James he the ſaid Edmund hath altogether refuſed, and ſtill doth refuſe, and ſo the ſaid James ſaith, that the ſaid Edmund hath not kept with him the covenant made between them as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid James hath hitherto altogether refuſed, and ſtill does refuſe, to the damage of the ſaid James of one hundred pounds; and therefore he prays his remedy.

And the ſaid Edmund, in his own proper perſon, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid indenture in the ſaid declaration mentioned, and profert'd to him in theſe words, to wit, [illegible] made the [illegible] day of March in the year of Our Lord [illegible], between James Innes, of the parish of St James, [illegible] county of Middleſex, eſquire, [illegible] and Edmund Lacon, of Gray's-Inn, in the ſame county, [illegible] man, of the other part: In the firſt place he the ſaid James Innes, for and in conſideration of [illegible] hereinafter contained [illegible] and of the ſaid Edmund Lacon, his executors and [illegible], to be [illegible] and performed, [illegible] and adminiſtrators, [illegible] ſaid Edmund Lacon [illegible] and truſtees, [illegible] of him the ſaid James Innes, and to the uſe of the ſaid Edmund Lacon, ſhall and may peaceably and quietly enter and without any contradiction, controul, act or means, or diſturbance whatever, of, by, or from the ſaid James Innes, or by his order, direction, or procurement directly or indirectly from time to time, and at all times from thenceforth, live, and reſide at ſuch place or places, and in ſuch manner as he ſhall think fit, ſeparate and apart from the ſaid James Innes, her huſband. And the ſaid Edmund Lacon doth, for himſelf, his heirs, executors and adminiſtrators, covenant, promiſe, and agree to and with the ſaid Innes, his heirs, executors, and adminiſtrators, by theſe preſents, in manner and form following, that is to ſay, that he the ſaid James Innes, obſerving, performing, fulfilling, and keeping the covenants and agreements in theſe preſents contained on his part and behalf to be kept, done, and performed, then he the ſaid Edmund Lacon, his executors and adminiſtrators, ſhall and will, from time to time, and at all times hereafter during ſuch times as the ſaid James Innes and Sarah his wife ſhall live ſeparate and apart from each other, well and ſufficiently ſave, keep harmleſs, and indemnified the ſaid James Innes, his heirs, executors and adminiſtrators, and his and their lands, goods, chattels and effects from and againſt the payment of all debts whatſoever which ſhe the ſaid Sarah Innes hath contracted with any perſon or perſons whomſoever, for neceſſaries or otherwiſe, either before her intermarriage with the ſaid James Innes, or ſince the fifteenth day of June now laſt paſt: and alſo from and againſt the payment of all

Plea, covenants performed.

ſuch other debt or debts ſhe the ſaid Sarah Innes ſhall or may hereafter contract with any perſon or perſons whatſoever, for neceſſaries or otherwiſe, during ſuch the ſaid ſeparation, and alſo from and againſt all coſts, charges and damages, which he the ſaid James Innes, his heirs, executors or adminiſtrators ſhall or may be compelled by law or equity to pay or ſuſtain, or be put unto for or on account of any ſuch debt or debts which ſhe the ſaid Sarah Innes hath contracted, either before her intermarriage with the ſaid James Innes, or ſince the ſaid ſeventeenth day of June laſt, or ſhall or may hereafter contract during ſuch ſeparation as aforeſaid; and alſo, that ſhe the ſaid Sarah Innes ſhall not, nor will at any time or times in anywiſe interrupt, diſturb, or trouble the ſaid James Innes in his manner of living, or by following him or abuſing him by ill language or otherwiſe howſoever, and that he ſhall and may attend and go about his lawful buſineſs, from time to time, peaceably and quietly, without any interruption, moleſtation, or trouble, by or from her or any other perſon or perſons, by her order, direction, or procurement, in anywiſe howſoever; and moreover, that the ſaid Edmund Lacon, his executors or adminiſtrators, ſhall and will well and truly pay, or cauſe to be paid unto the ſaid James Innes, the clear yearly ſum of one hundred pounds of lawful money of Great Britain, by half yearly payments, viz. on the twenty-fifth day of March, and the twenty-ninth day of September, that is to ſay, the ſum of fifty pounds, part thereof, being the intereſt of the ſum of one thouſand pounds, for and during the life of the ſaid James Innes, and fifty pounds, reſidue of the ſaid one hundred pounds, during the joint lives of the ſaid Sarah Innes (heretofore Sarah Breton), and of the ſaid Edmund Lacon, according to the ſtipulations mentioned in a certain memorandum or agreement of the twenty-fourth of September 1762, made previous to the marriage of the ſaid James Innes and Sarah his wife; in conſideration whereof, and for other conſiderations hereinbefore mentioned, he the ſaid James Innes, for himſelf, his heirs, executors and adminiſtrators, doth hereby covenant, promiſe, and agree, to and with the ſaid Edmund Lacon, his executors and adminiſtrators, that it ſhall and may be lawful to and for the ſaid Edmund Lacon, his executors and adminiſtrators, to deduct and defalk out of the ſaid yearly ſum of one hundred pounds the clear yearly ſum of fifty pounds of like lawful money, to be by him or them retained and applied during ſuch ſeparation as aforeſaid for and towards the ſupport and maintenance of the ſaid Sarah Innes, and for her ſole and ſeparate uſe and benefit, and to be paid into her own proper hands, and her receipt in writing to be from time to time a ſufficient diſcharge and diſcharges for the ſame; which ſaid yearly ſum of fifty pounds is to commence and be payable unto the ſaid Sarah Innes from Michaelmas Day laſt; and laſtly, it is hereby agreed, by and between the ſaid parties to theſe preſents, that upon the ſaid Edmund Lacon, his executors or adminiſtrators, producing and delivering from time to time (half-yearly) the receipt of the ſaid Sarah Innes for the ſum of twenty-

five

five pounds (being the half-yearly payment of the ſum of fifty pounds) unto the ſaid James Innes, or unto William Innes, of Lime-ſtreet-ſquare, London, merchant (the agent for the time being of the ſaid James Innes), or to ſuch other perſon from time to time as he the ſaid James Innes ſhall appoint, that then and in ſuch caſe ſuch receipt, from time to time, ſhall be a ſufficient diſcharge to the ſaid Edmund Lacon for the ſaid twenty-five pounds, (part of the ſaid ſum of fifty pounds hereby agreed to be annually paid or allowed her for the purpoſes aforeſaid, and that upon the ſaid Edmund Lacon, his executors or adminiſtrators, paying the other twenty-five pounds half yearly) unto the ſaid William Innes, for the uſe of the ſaid James Innes, or to whom elſe he the ſaid James Innes ſhall appoint, that then the receipt of the ſaid William Innes, or of ſuch other perſon to be appointed by the ſaid James Innes for the time being, ſhall be a ſufficient diſcharge for the ſaid twenty-five pounds to the ſaid E. L his executors or adminiſtrators, in the ſame manner as if ſuch receipt had been given and ſigned by the ſaid James Innes, his executors or adminiſtrators: Provided always, that in caſe the ſaid James Innes and Sarah his wife ſhall at any time hereafter cohabit and live together for the ſpace of fourteen days and upwards, then and in ſuch caſe the preſent indenture, in reſpect of the ſaid yearly payment of the ſaid ſum of one hundred pounds, and of ſuch debts as ſhall, from and after the time of ſuch cohabitation as aforeſaid, be by her the ſaid Sarah Innes contracted, ſhall ceaſe, determine, and be utterly void and of no effect, any thing hereinbefore contained to the contrary thereof not withſtanding: In witneſs the ſaid parties to theſe preſents have hereunto interchangeably ſet their hands and ſeals, the day and year firſt above written, which being read and heard, the ſaid Edmund ſaith, that the ſaid James Innes ought not to have his aforeſaid action thereof maintained againſt him, becauſe proteſting that the declaration aforeſaid, and the matters therein contained, are not ſufficient in law for the ſaid James Innes to have his aforeſaid action thereof maintained againſt him the ſaid Edmund, proteſting alſo, that on the twenty-fifth day of March 1768, in the ſaid declaration mentioned fifty pounds for two half-yearly payments of the ſaid yearly ſum of one hundred pounds, did not become due and owing from the ſaid Edmund to the ſaid James, as the ſaid James hath in his declaration aforeſaid above in that behalf alledged: for plea in this behalf the ſaid Edmund ſaith, that the ſaid Sarah Innes, in the ſaid declaration and in the indenture aforeſaid named, on the day of exhibiting of the bill of the ſaid James againſt, was, and from thence hitherto hath been, and ſtill is living and in full life, to wit, at Weſtminſter aforeſaid, and that the ſaid James and Sarah his wife have, from the time of the making of the indenture aforeſaid until and upon the ſaid twenty-ſixth day of March in the year of Our Lord 1768, in the ſaid declaration above mentioned, and from thence until the day of exhibiting of the bill of the ſaid James againſt the ſaid Edmund, continued to live ſepa-

Proteſting that the ſaid inſtruments did not become due

Plaintiff and wife continue to live ſeparate.

rate and apart from each other, according to the tenor, true intent and meaning of the ſaid indenture; and that, by reaſon of the ſaid premiſes, and according to the tenor, true intent and meaning of the ſaid indenture, the ſaid Sarah Innes the wife of the ſaid James Innes, became intitled to have and receive into her proper hands, and for her ſole and ſeparate uſe and benefit, out of the ſaid yearly ſum of one hundred pounds in the ſaid indenture mentioned, accruing and growing due from Michaelmas-day in the year of Our Lord 1766, until the day of exhibiting the bill of the ſaid James againſt the ſaid Edmund, the clear yearly ſum of fifty pounds, to wit, by half-yearly payments, and to give to him the ſaid Edmund, from time to time, receipts in writing for all and every ſuch ſum and ſums of money, amounting to the ſum of fifty pounds yearly and no more, as he the ſaid Edmund ſhould, under and by virtue of the ſaid indenture, pay to her the ſaid Sarah Innes according to the tenor, true intent and meaning of the ſaid indenture: And the ſaid Edmund further ſaith, that under and by virtue of the indenture aforeſaid, after the making of the ſaid indenture, and before the day of exhibiting the bill of the ſaid James againſt the ſaid Edmund, to wit, on the twenty-ninth day of September 1767, to wit, at Weſtminſter aforeſaid, there became due, and under and by virtue of the indenture aforeſaid, from him the ſaid Edmund the ſum of fifty pounds only and no more, for half the yearly ſum of one hundred pounds in the ſaid indenture mentioned, and which, according to the tenor of the ſaid indenture, was payable in manner following, to wit, the ſum of twenty-five pounds, one half of ſuch half yearly payment unto the ſaid James, and twenty-five pounds, reſidue of the ſaid half-yearly payment, to the ſaid S. I. for her ſole and ſeparate uſe and benefit; and that the ſaid ſum of fifty pounds, ſo being due as aforeſaid for ſuch half-yearly payment, and the ſame being payable in manner aforeſaid, he the ſaid Edmund afterwards, and before the day of the exhibiting of the bill of the ſaid James againſt him the ſaid Edmund, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, did pay the one half of ſuch half-yearly payment, to wit, the ſaid ſum of twenty-five pounds, to which the ſaid James was entitled in form aforeſaid unto the ſaid James, according to the tenor, true intent and meaning of the aforeſaid indenture, and of the covenant of the ſaid Edmund ſo by him made in this behalf as aforeſaid, to wit, at Weſtminſter aforeſaid: And the ſaid Edmund further ſaith, that he the ſaid Edmund afterwards, and before the day of exhibiting the bill of the ſaid James againſt the ſaid Edmund, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, did pay the other half of the ſaid half-yearly payment, to wit, the ſum of twenty-five pounds, being the reſidue of the ſaid half-yearly payment, unto the ſaid Sarah Innes, and into her proper hands, and to and for her ſole and ſeparate uſe and benefit, according to the tenor, true intent and meaning of the ſaid indenture, and of the aforeſaid covenant of the ſaid Edmund ſo by him made in this behalf as aforeſaid; and that the ſaid Sarah Innes then

By reaſon whereof ſhe became entitled to receive the annuity of 100l. according to the tenor of the articles.

then and there, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, according to and by virtue of the power given and granted to her the ſaid Sarah Innes in and by virtue of the ſaid indenture aforeſaid, did give to the ſaid Edmund a receipt for the ſaid ſum of twenty-five pounds, ſo being the half of ſuch half-yearly payment; and that he the ſaid Edmund did afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, produce and deliver to the ſaid William Innes, in the ſaid indenture mentioned, the agent of the ſaid James, the ſaid receipt of the ſaid Sarah Innes for the ſaid laſt-mentioned ſum of twenty-five pounds, being ſuch half-yearly payment of the ſaid ſum of fifty pounds, to which the ſaid Sarah Innes was ſo intitled in form aforeſaid, he the ſaid James, not having made any appointment for the delivery of the receipt aforeſaid to any other perſon whomſoever, according to the tenor, true intent and meaning of the ſaid indenture, and of the aforeſaid covenant of the ſaid Edmund ſo by him made in this behalf as aforeſaid, to wit, at Weſtminſter aforeſaid: And the ſaid Edmund further ſaith, that under and by virtue of the indenture aforeſaid, after the making of the ſaid indenture, and before the day of exhibiting of the bill of the ſaid James againſt the ſaid Edmund, and after the making of the payment laſt aforeſaid, to wit, on the twenty-fifth day of March, in the year, &c. 1768, to wit, at Weſtminſter aforeſaid, there became due under and by virtue of the indenture aforeſaid, from him the ſaid Edmund, the ſum of fifty pounds only and no more, for half the yearly ſum of one hundred pounds in the ſaid indenture mentioned, and which, according to the tenor of the ſaid indenture, was payable in manner following, to wit, the ſum of twenty-five pounds, one half of ſuch half-yearly payment, unto the ſaid James, and twenty-five pounds reſidue of the ſaid half-yearly payment, to the ſaid Sarah Innes, for her ſole and ſeparate uſe and benefit, and that the ſaid ſum of fifty pounds, ſo being due as aforeſaid for ſuch half-yearly payment, and the ſame being payable in manner aforeſaid, he the ſaid Edmund afterwards, and before the day of exhibiting of the bill of the ſaid James againſt him the ſaid Edmund, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, did pay the one half of ſuch half-yearly payment, to wit, the ſaid ſum of twenty-five pounds, to which the ſaid James was intitled in form laſt aforeſaid unto the ſaid James, according to the tenor, true intent and meaning of the aforeſaid indenture, and of the covenant of the ſaid Edmund ſo by him made in this behalf as aforeſaid, to wit, at Weſtminſter aforeſaid: And the ſaid Edmund further ſaith, that he the ſaid Edmund afterwards, and before the day of the exhibiting of the bill of the ſaid James againſt the ſaid Edmund, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, did pay the other half of the ſaid half-yearly payment, to wit, the ſum of twenty-five pounds, being the reſidue of the ſaid half-yearly payment, unto the ſaid Sarah Innes, into her proper hands, and to and for her ſole and ſeparate uſe and benefit, according to the tenor, true

intent and meaning of the ſaid indenture, and of the aforeſaid covenant of the ſaid Edmund ſo by him made in this behalf as aforeſaid; and that the ſaid Sarah Innes then and there, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, according to and by virtue of the power given and granted to her the ſaid Sarah Innes in and by virtue of the ſaid indenture aforeſaid, did give to the ſaid Edmund a receipt for the ſaid ſum of twenty five pounds, ſo being the half of ſuch half-yearly payments; and that he the ſaid Edmund did afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, produce and deliver to the ſaid James the ſaid receipt of the ſaid Sarah Innes for the ſaid laſt-mentioned ſum of twenty five pounds, to which ſhe the ſaid Sarah was ſo entitled in form laſt aforeſaid, according to the tenor, true intent and meaning of the ſaid indenture, and of the aforeſaid covenant of the ſaid Edmund ſo made by him in this behalf as aforeſaid; and this he the ſaid Edmund is ready to verify: wherefore he prays judgment if the ſaid James ought to have his aforeſaid action thereof maintained againſt him. G. NARES.

Imparlance. And hereupon the ſaid James prayeth leave to reply to the plea of the ſaid Edmund here until Friday next after the morrow of the Holy Trinity, and he hath it, &c.; the ſame day is given to the ſaid

Replication. Edmund here, &c.; and now at this day cometh here as well the ſaid Edmund in his proper perſon, as the ſaid James by his attorney aforeſaid; and upon this the ſaid James ſaith, that he, by reaſon of any thing by the ſaid Edmund above in pleading alledged, ought not to be barred from having his aforeſaid action againſt the ſaid Edmund, becauſe he ſaith, that he the ſaid Edmund did not pay to the ſaid James the ſaid ſeveral ſums of twenty-five pounds and twenty-five pounds in manner and form as the ſaid Edmund hath above in pleading alledged; and this he prays may be enquired of by the country. R. LEIGH.

Rejoinder. And the ſaid Edmund doth ſo likewiſe: therefore the ſheriff is commanded to cauſe to come here on Wedneſday next after three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

Declaration in covenant, in breach of an agreement *to accept a leaſe* of the plaintiff, of premiſes, when prepared, the leaſe was prepared, but *defendant* refuſed *to execute the ſame.*

MIDDLESEX, to wit. Joſeph Nelſon complains of Richard Towne, being, &c. in a plea of breach of covenant: for that whereas the ſaid Joſeph, before and at the time of the making of the agreement hereafter mentioned, was lawfully poſſeſſed of the ſeveral premiſes in ſuch agreement and hereafter mentioned, with the appurtenances, for the then reſidue and remainder of a certain term of years theretofore thereof granted, and ſtill ſubſiſting and unexpired, and whereof twenty-one years and more would be and were to come and unexpired on the twenty-fifth day of March next, after the making of the ſaid agreement and now laſt paſt; and being

being ſo thereof poſſeſſed, whilſt he was ſo poſſeſſed, to wit, on, &c. at, &c. by a certain agreement then and there made between the ſaid Joſeph, by the name of, &c. of the one part, and Richard, by the name of, &c. of the other part; one part of which agreement, ſealed with the ſeal of the ſaid Richard, the ſaid Joſeph now brings into court here, the date whereof is the day and year laſt aforeſaid, the ſaid Joſeph did (amongſt other things) promiſe, &c. &c. [ſet out the agreement] as by the ſaid agreement, reference being thereto had, will more fully appear: And the ſaid Joſeph avers, that in purſuance of the ſaid agreement the ſaid Joſeph afterwards, and before the twenty-fifth day of March next, after the making thereof, to wit, on, &c at, &c. cauſed to be prepared and engroſſed on parchment duly ſtamped, a good and valid indenture of leaſe of the ſaid premiſes in the ſaid agreement mentioned, for the ſaid term ſo thereby agreed to be granted as aforeſaid, and containing therein ſuch covenants and agreements as aforeſaid, together with a counterpart of ſuch leaſe, according to the tenor and effect of the ſaid agreement; and afterwards, to wit, on, &c. at, &c. duly executed the ſaid leaſe, and then and there tendered the ſame, together with ſuch counterpart thereof as aforeſaid, unto him the ſaid Richard, and then and there required him to execute ſuch counterpart thereof accordingly, and upon ſuch execution thereof to pay unto him the ſaid Joſeph the ſaid ſum of fifty pounds in the ſaid agreement mentioned, and thereby agreed to be paid to him as aforeſaid, as and for the expence of erecting and building the ſaid double coach-houſe and room over the ſame in manner aforeſaid; yet he the ſaid Richard did not, nor would then and there, at the time of the ſaid Joſeph's ſo executing ſuch leaſe as aforeſaid, or at any other time whatſoever, then and there execute and deliver, nor hath he as yet executed or delivered unto him the ſaid Joſeph the ſaid or any other counterpart of ſuch leaſe, nor did he then and there, or at any other time whatſoever, pay or cauſe to be paid, nor hath as yet paid, or cauſed to be paid to the ſaid Joſeph, the ſaid ſum of fifty pounds in the ſaid agreement mentioned, and thereby agreed to be paid as and for the expence of erecting and building the ſaid double coach-houſe and room over the ſame in manner aforeſaid, but then and there refuſed ſo to do, or to accept ſuch leaſe, and therein wholly failed and made default, contrary to the tenor and effect of the ſaid agreement, and of the ſaid covenant ſo by him in that behalf made as aforeſaid: and ſo the ſaid Joſeph ſays, that he the the ſaid Richard (although often requeſted) hath not kept his ſaid covenant ſo by him made with the ſaid Joſeph in this behalf as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Joſeph hath hitherto wholly refuſed, and ſtill refuſes ſo to do; wherefore the ſaid Joſeph ſaith, that he is injured, and hath ſuſtained damages to the value of two hundred pounds, and therefore he brings his ſuit, &c. V. LAWES.

Covenant in the exchequer by *baron and feme*, on articles of agreement to become co-partners in trade with a *feme sole* during the term of fourteen years, and to be carried on in the dwelling-house and shop of the *feme*, situate in Cornhill, on the trade of printseller, carver, and gilder.

LONDON, to wit. John Walker and Elizabeth Walker, debtors and complainants of our sovereign lord the present king, come before the barons of the exchequer at Westminster, on the sixth day of November in the same term, by Richard Edmunds their attorney, and complain by bill against Joseph Harris, present here in court the same day, of a plea of covenant broken: for that whereas, by a certain agreement made the sixth day of August, in the year of Our Lord 1792, to wit, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, between the said John and Elizabeth, by the respective names and descriptions of John Walker, of Cornhill, in the city of London, printseller, carver, and gilder, and Elizabeth his wife, of the first part, one Thomas Morgan, by the name and description of Thomas Morgan, of the Inner Temple, London, esquire, of the second part, and the said Joseph Harris, by the name and description of Joseph Harris, of the city of Bristol, sugar refiner, of the third part (one part of which said agreement, sealed with the seal of the said Joseph, the said John and Elizabeth now bring here into court, the date whereof is the same day and year in that behalf aforesaid, reciting that the said John Walker had, by a certain deed or writing, bearing date the twenty-third day of June, which was in the year of Our Lord 1792, assigned, transferred, and made over unto the said Thomas Morgan in trust, for and in behalf of the said Elizabeth Walker his wife, and for her sole and separate use and benefit, and for no other use and purpose whatsoever, all and singular his then stock, utensils, and implements in trade, monies, books, debts, and all other properties and effects whatsoever and wheresoever to him the said John Walker then belonging, and therein for ever quitted all claim and demand whatsoever to, or interest in the said trade or business, or any part thereof, or profits arising therefrom (except as is therein excepted reference hereunto being had would more fully and at large appear reciting that the said trade or business was then carried by the said E. W. as her sole right and property, and for her benefit and advantage, according to the custom of the city of London (excepting as before excepted), and as was thereby acknowledged by the said John Walker her said husband, it is by the said agreement now brought here into court, witnessed that the said E. W. had, by and with the advice and consent of her said husband, and also by and with the advice and consent of the said Thomas Morgan (party thereto), agreed to take the said Joseph Harris as a co-partner in the said trade or business of printseller, carver, and gilder, and all and every the parts and branches thereof, and to be carried on in the dwelling-house and shop of the said Elizabeth Walker, situate in Cornhill aforesaid, and in the joint names of them the said Elizabeth Walker and Joseph Harris, for and during the term of fourteen years, or until the expiration of the lease of the house and premises then in the occupation of the said John Walker, and also a moiety or half part of the interest in the said lease, to commence from and after the twenty-ninth day of September then next ensuing the date there-

of, on the terms and the conſiderations therein mentioned, that is to ſay, the ſaid Joſeph Harris ſhould pay to the ſaid Elizabeth Walker, on or before the twenty-ninth day of September then next enſuing the date thereof, the ſum of three hundred pounds, as a premium or fee to be admitted into a co-partnerſhip with her into the ſaid trade or buſineſs, and to be entitled to, and receive for his own ſeparate uſe and benefit one full moiety or half ſhare of the benefits and profits that might ariſe thereupon; and it was by the ſaid agreement further agreed, that the ſtock, utenſils, and implements in trade of the ſaid Elizabeth Walker ſhould be valued, and an account thereof taken by two indifferent perſons, one of whom ſhould be choſen by the ſaid Elizabeth Walker, and the other by the ſaid Joſeph Harris, or by any other mode of valuation in which they might mutually agree, the amount of the ſtock, utenſils, and implements ſo valued ſhould be taken into the ſaid co-partnerſhip, and ſhould be accounted and acknowledged to be the capital of the ſaid Elizabeth Walker; and the ſaid Joſeph Harris did alſo thereby agree to advance and bring into the ſaid co-partnerſhip ſuch ſum or ſums of money as ſhould be equal to the amount of the value of the ſtock, &c. of the ſaid Elizabeth Walker, and which ſhould be advanced and paid in ſuch proportions, and at ſuch times as might be required, for the uſe and benefit of the joint concern, the ſaid Joſeph Harris allowing or paying intereſt after the rate of five pounds per cent. for ſuch ſum or ſums as ſhould remain unpaid from time to time after the twenty-ninth of September aforeſaid, until the whole ſhould be advanced or paid, and the ſame ſhould be acknowledged or accounted to be his capital as by the ſaid agreement now brought here into court, reference being thereto had may more fully appear: And the ſaid John and Elizabeth in fact ſay, that although the ſaid Elizabeth well and truly performed and fulfilled every thing in the ſaid agreement mentioned on her part and behalf to be performed and fulfilled, yet proteſting that the ſaid Joſeph hath not performed and fulfilled any thing in the ſaid agreement mentioned on his part and behalf to be performed and fulfilled, the ſaid John and Elizabeth in fact ſay, that the ſaid Joſeph did not pay to the ſaid Elizabeth, on or before the twenty-ninth day of September next enſuing the date of the ſaid agreement, that is to ſay, the twenty-ninth day of September, in the year of Our Lord 1792, nor hath he at any time ſince paid to the ſaid Elizabeth the ſaid ſum of three hundred pounds, or any part thereof, as a premium or fee to be admitted into the ſaid co-partnerſhip with her into the ſaid trade or buſineſs, or on any other account whatſoever, according to the form and effect of the ſaid agreement, and of the covenant of the ſaid Joſeph in this behalf made as aforeſaid (although the ſaid Elizabeth, from the time of the making of the ſaid agreement, always hitherto hath been ready and willing to take the ſaid Joſeph into the ſaid co-partnerſhip), but hath wholly neglected and omitted ſo to do, contrary to the form and effect of the ſaid agreement, and of the covenant of the ſaid Joſeph in this behalf made

as

as aforeſaid: And the ſaid John and Elizabeth further in fact ſay, that ſhe the ſaid Elizabeth heretofore, to wit, on the twenty-ſecond day of September, in the year of Our Lord 1792, at London aforeſaid, in the parish and ward aforeſaid, did cauſe due notice to be given to the ſaid Joſeph, that ſhe the ſaid Elizabeth would, on the ſeventeenth day of October then next enſuing (the ſame being a reaſonable and proper time in that behalf) cauſe the ſtock, utenſils, and implements in trade of her the ſaid Elizabeth to be valued, and an account thereof taken by one R. L. an indifferent perſon choſen by the ſaid Elizabeth, and did then and there, to wit, on the twenty-ſecond day of September, in the year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, require the ſaid Joſeph to chuſe ſome indifferent perſon to join in the valuation and account of the ſaid ſtock, utenſils, and implements of trade on the part of him the ſaid Joſeph, according to the tenor, true intent and meaning of the ſaid agreement, and of the covenant of the ſaid Joſeph in this behalf made as aforeſaid; but the ſaid John and Elizabeth further ſay, that the ſaid Joſeph did not, on the ſaid ſeventeenth day of October, in the year laſt aforeſaid, or at any other time, chuſe any perſon to join with the ſaid R. L. in the valuation and account of the ſaid ſtock, utenſils, and implements in trade, nor point out or propoſe any other mode of valuation whatſoever, but altogether neglected, omitted, and refuſed reſpectively ſo to do, and ſtill doth neglect, omit, and refuſe, contrary to the tenor, true intent and meaning of the ſaid agreement, and of the covenant of the ſaid Joſeph in this behalf made as aforeſaid; and ſo the ſaid John and Elizabeth ſay, that the ſaid Joſeph, although often requeſted, hath not kept with the ſaid Elizabeth the covenant made between the ſaid Joſeph and Elizabeth, but hath broken the ſame, and to keep the ſame with the ſaid Elizabeth hath hitherto wholly and ſtill doth refuſe, to the damage of the ſaid John and Elizabeth of five hundred pounds, whereby they are the leſs able to ſatisfy his ſaid majeſty the debt which they owe to his ſaid majeſty at his ſaid exchequer; and therefore they bring this ſuit, &c. Pledges, &c.

Plea that no articles of co-partnerſhip, with neceſſary additional covenants have been legally made according to the effect of the indenture, for the performance thereof.

AND the ſaid Joſeph Harris, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the ſaid agreement, and it is read to him in theſe words, to wit: [this agreement, made this, &c.] which being read and heard, the ſaid Joſeph ſays, that the ſaid John and Elizabeth ought not to have or maintain their aforeſaid action thereof againſt him, becauſe he ſays, that no articles of co-partnerſhip covenant or agreement in the ſaid declaration mentioned, have at any time been legally made with ſuch additional covenants as might be neceſſary for the due performance thereof, according to the form and effect of the ſaid indenture; and this he is ready to verify: wherefore he prays judgment if the ſaid John and Elizabeth ought to have or maintain their aforeſaid action thereof againſt

him,

him, &c.: And for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, the ſaid Joſeph ſays, that the ſaid John and Elizabeth ought not to have or maintain their aforeſaid action thereof againſt him, becauſe he ſays, that a moiety or half part of the ſaid leaſe in the ſaid agreement mentioned, to commence from and after the twenty-ninth day of September then next enſuing the date of the ſaid agreement, hath not any time hitherto been made or aſſigned by the ſaid John and Elizabeth, or either of them, to the ſaid Joſeph; and this he is ready to verify: wherefore he prays judgment if the ſaid John and Elizabeth ought to have or maintain their aforeſaid action thereof againſt him: And for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made, and provided, the ſaid Joſeph ſays, that the ſaid John and Elizabeth ought not to have or maintain their aforeſaid action thereof againſt him, becauſe he ſays, that before the execution of the ſaid agreement in the ſaid declaration mentioned, to wit, on the fourth day of Auguſt, in the year of Our Lord 1792, at London aforeſaid, in the pariſh and ward aforeſaid, the ſaid Elizabeth falſely and fraudulently repreſented to the ſaid Joſeph, that her ſaid trade or buſineſs of a printſeller, carver, and gilder, in the ſaid declaration mentioned, netted the clear annual ſum of eight hundred pounds, and was capable of being conſiderably increaſed, in order to induce the ſaid Joſeph to enter into and execute the ſaid agreement in the ſaid declaration mentioned: And the ſaid Joſeph further ſaith, that by means of ſuch falſe and fraudulent repreſentations, to wit, on the ſixth day of Auguſt in the year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, he the ſaid Joſeph was fraudulently drawn in and induced to execute the ſaid agreement in the ſaid declaration mentioned, and for no other cauſe whatſoever, when in truth and in fact the ſaid trade or buſineſs in the ſaid declaration mentioned never did nett the clear annual ſum of eight hundred pounds, wherefore the ſaid Joſeph ſays, that the ſaid agreement is void and of none effect; and this he is ready to verify: wherefore he prays judgment if the ſaid John and Elizabeth ought to have or maintain their aforeſaid action thereof againſt him, &c. G. WOOD.

That a moiety of leaſe hath not been aſſigned.

That defendant was drawn in by plaintiffs who falſely repreſented trade to nett 800l. per annum.

And the ſaid John and Elizabeth, as to the plea of the ſaid Joſeph firſt above pleaded in bar, ſay, that the ſaid plea and the matters therein contained, are not ſufficient in law to bar the ſaid John and Elizabeth from having and maintaining their aforeſaid action thereof againſt the ſaid Joſeph; to which ſaid plea, in manner and form as the ſame is above made and ſet forth, they the ſaid John and Elizabeth are not under the neceſſity, or in any wiſe bound by the laws of this realm to anſwer; and this they are ready to verify: wherefore, for want of a ſufficient plea in this behalf, they the ſaid John and Elizabeth pray judgment and their damages

General demurrer.

damages on occaſion of the premiſes, to be adjudged to them, &c. and the ſaid John and Elizabeth, as to the plea of the ſaid Joſeph by him ſecondly above pleaded in bar, ſay, that the ſaid plea and the matters therein contained are not ſufficient in law to bar the ſaid John and Elizabeth from having and maintaining their aforeſaid action thereof againſt the ſaid Joſeph, to which ſaid ſecond plea, in manner and form as the ſame is above made and ſet forth, they the ſaid John and Elizabeth are not under the neceſſity, or in any wiſe bound by the law of the realm to anſwer; and this they are alſo ready to verify: wherefore, for want of a ſufficient plea in this behalf, they the ſaid John and Elizabeth pray judgment and their damages on occaſion of the premiſes to be adjudged to them, &c.; and the ſaid John and Elizabeth, as to the plea of the ſaid Joſeph laſtly above pleaded in bar, ſay, that by reaſon of any thing in that plea contained, they the ſaid John and Elizabeth ought not to be barred from having and maintaining their aforeſaid action againſt the ſaid Joſeph, becauſe they ſay, that the ſaid Elizabeth did not make ſuch repreſentation to the ſaid Joſeph as the ſaid Joſeph hath above in his ſaid laſt plea alledged; and this the ſaid John and Elizabeth prays may be enquired of by the country, &c. &c. P. DAUNCEY.

Joinder in demurrer.

And the ſaid Joſeph ſays, that the plea aforeſaid by him the ſaid Joſeph, in manner and form aforeſaid firſt above pleaded, and the matters in the ſame contained, are good and ſufficient in law to bar them the ſaid John and Elizabeth from having and maintaining their actions aforeſaid thereof againſt him the ſaid Joſeph; which ſaid plea, and the matter therein contained, the ſaid Joſeph is ready to verify, and prove as the court, &c.; and becauſe the ſaid John and Elizabeth do not anſwer to that plea, nor the ſame hitherto deny the ſaid Joſeph as before, prays judgment, and that the ſaid John and Elizabeth may be barred from having and maintaining their action aforeſaid thereof againſt him the ſaid Joſeph: And the ſaid Joſeph ſays, that the plea aforeſaid by him the ſaid Joſeph in manner and form aforeſaid ſecondly above pleaded, and the matters in the ſame contained, are good and ſufficient in law to bar them the ſaid John and Elizabeth from having and maintaining their action aforeſaid thereof againſt him the ſaid Joſeph; which ſaid laſt-mentioned plea, and the matters therein contained, the ſaid Joſeph is ready to verify and prove as the court, &c.; and becauſe the ſaid John and Elizabeth do not anſwer to that plea, nor the ſame hitherto deny the ſame Joſeph as before, prays judgment, and that the ſaid John and Elizabeth may be barred from having and maintaining their action aforeſaid thereof againſt him the ſaid Joſeph, &c. Iſſue on third plea. G. WOOD.

Judgment on demurrer for plaintiff.

Eaſter

Eaſter Term, in the twenty-ſixth year of the reign of king George the Third.

Declaration of articles of agreement by co-partners in trade (pawnbrokers) for the better future regulation of their trade.

MIDDLESEX, to wit. Richard Greenwood complains of James Crookſhanks being in the cuſtody of the marſhal of the marſhalſea of our ſovereign lord the now king, before the king himſelf, of a plea of covenant broken: for that *whereas* by articles of agreement made, concluded, and agreed upon the twenty-firſt day of July, in the year of Our Lord 1783, at the pariſh of St. Mary-le-bone, in the county of Middleſex, between the ſaid Richard Greenwood, by the name and deſcription of Richard Greenwood, of Bird-ſtreet, Oxford-ſtreet, in the pariſh of St. Mary-le-bone, in the county of Middleſex, pawnbroker, of the one part; and the ſaid James Crookſhanks, by the name and deſcription of James Crookſhanks, of the ſame place, pariſh, and county aforeſaid, pawnbroker, of the other part (which ſaid agreement, ſealed with the ſeal of the ſaid James, the ſaid Richard now brings here into court, the date whereof is the ſame day and year aforeſaid); it was thereby *witneſſed* that *whereas* they the ſaid Richard Greenwood and James Crookſhanks had uſed, exerciſed, and carried on the trade or buſineſs of pawnbrokers for ſeveral years then laſt paſt; and for the better underſtanding each others intentions in a more clear and better way and manner in future, it was agreed by and between the ſaid parties that, in future, neither of the ſaid parties ſhould, if in town, be abſent from their ſaid buſineſs, and of attending their ſhop on any Saturday evening from four until twelve, under the penalty or forfeiture of the ſum of two pounds two ſhillings, ſuch forfeitures to be demanded by the party at home of and from the party ſo abſenting himſelf; and the ſaid parties did by the ſaid agreement agree to pay the ſame, and all other forfeitures therein mentioned and contained, let who would be the defaulter; *and* it was thereby further agreed by and between the ſaid parties, that each party ſhould, when deſirous of being abſent for any ſpace of time exceeding one day from their ſaid buſineſs, give the other party proper notice thereof, at leaſt one day, of his intentions, and have the conſent of the other before he ſhould be at liberty to leave the ſaid ſhop and buſineſs, under the forfeiture of five ſhillings; *and further*, that one or both of the ſaid parties ſhould and would attend to ſee the ſaid ſhop opened from March the twenty-fifth to September the twenty-ninth in every year at ſix o'clock every morning, (Sundays excepted) under the penalty of ten ſhillings for each omiſſion, and under the like penalty from the twenty-ninth of September to the twenty-fifth of March in every year, to ſee the ſaid ſhop opened and fit for the diſpatch of buſineſs at eight o'clock in the morning; and that each party ſhould take his alternate turn with the other each and every day with reſpect to going out or being abſent from the ſaid ſhop and buſineſs; and that if the party whoſe turn it was to attend ſhould abſent himſelf without the conſent of the other, on ſuch day or time, he ſhould forfeit for each offence the penalty of ten ſhillings; *and further*, that if either of the ſaid parties whoſe turn it was to attend ſhould abſent himſelf from the time of opening the ſhop to

ſhutting it during the whole day from the ſaid premiſes, the time or ſpace of fifteen minutes, except ſuch party was neceſſarily obliged to be abſent by being ſummoned before any magiſtrate, or to provide for the family in eating or drinking, the defaulter ſhould in that caſe (except as was therein excepted), forfeit to the other party for each offence the ſum of ten ſhillings; *and* it was alſo agreed by and between the ſaid parties, that the time of cloſing the ſhop buſineſs ſhould, during the ſummer ſix months (that is to ſay), from March to September in every year the ſhop ſhould, with the aforeſaid exception, be ſhut every evening at nine of the clock; *and* that neither of the ſaid parties ſhould make any journey into the country, or elſewhere, without giving the other party due notice what time he ſhould return, *and* that ſuch party not returning within two days from the time he appointed to return, unleſs hindered by illneſs, or ſome unforeſeen accident, ſhould forfeit to the other for every breach of offence the ſum of one pound one ſhilling; *and laſtly, it was agreed* by and between the ſaid parties, that if either party made default in not ſetting down on a ſlate, or book kept for that purpoſe, any ſum or ſums of money, goods, or wearing apparel, or any thing or things taken from or out of the ſaid premiſes by either of the ſaid parties, or by their means, conſent, or privity, or if either of them ſhould at various times draw from, or take from out of the ſaid ſhop or premiſes, or from the box or till in the ſaid ſhop any money or things, that on proof of any ſuch things or money being taken away or drawn, the party taking away any ſuch things, or cauſing the ſame to be taken or drawn away, and ſhould make ſuch default in ſetting down the ſame, or ſhould not duly account for the ſame, or for goods bought for the uſe of the ſaid buſineſs, ſhall forfeit to the other the ſum of three guineas for every ſuch neglect or default; *and* for the due performance and ſatisfaction of the ſaid agreement, each of the ſaid parties did thereby for himſelf, his executors, and adminiſtrators, covenant and agree with the other, his executors, and adminiſtrators, well and truly to obſerve and perform all the agreements therein mentioned; and in default of any one article well and truly to pay ſuch penalty, forfeiture, ſum and ſums of money to the other, as in and by the ſaid agreement is mentioned and expreſſed to be paid by the defaulter; *as* by the ſaid articles of agreement, reference being thereto had, amongſt other things, will more fully and at large appear: And although the ſaid Richard hath well and truly performed and fulfilled all and ſingular the covenants and agreements in the ſaid articles of agreement mentioned, on his part and behalf to be done and performed; yet proteſting that the ſaid James Crookſhanks hath not performed and fulfilled any thing in the ſaid articles of agreement mentioned, on his part and behalf to be done and performed, in fact the ſaid Richard ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the twentieth day of Auguſt, in the year

Breach.

of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises, in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain hat, to wit, of the value of five shillings, being part of the goods belonging to and in the custody of the said Richard and James, as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same, according to the form and effect of the said articles of agreement; but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement, whereby the said James forfeited and became liable to pay to the said Richard the sum of three pounds three shillings for such neglect or default: And the said Richard further says, that 2d Breach. after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the fourteenth day of October, in the said year of Our Lord 1784, at the parish of St. Mary le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, certain plates, to wit, twelve pewter plates, to wit, of the value of six shillings, being part of the goods belonging to and in the custody of the said Richard and James as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of the said articles of agreement, but on the contrary thereof, the said James made default in setting down the same as aforesaid, and did not duly account for the same as aforesaid, contrary to the force, form, and effect of the said articles of agreement; whereby the said James forfeited and became liable to pay to the said Richard the further sum of three pounds and three shillings for such neglect or default: *And* the said Richard further says, that 3d Breach. after the making of the said articles, and whilst the said Richard and James used, exercised, and carried on the said trade or business of pawnbrokers, to wit, on the said fourteenth day of October, in the said year of Our Lord 1784, at the parish of St. Mary-le-bone aforesaid, in the county aforesaid, the said James took from out of the said shop and premises in the said articles of agreement mentioned, where the said Richard and James so used, exercised, and carried on their said business, a certain metal snuff box, to wit, of the value of three shillings, being part of the goods belonging to and in the custody of the said Richard and James, as co-partners in the said trade or business as aforesaid, and did not set down the same upon a slate or book kept for that purpose, nor did duly account for the same according to the form and effect of

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the ſaid articles of agreement; but on the contrary thereof, the ſaid James made deſault in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the ſaid fourteenth day of October, in the ſaid year of Our Lord 1784, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain pair of *ſilver* tea tongs, to wit, of the value of eight ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as co-partners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: *And* the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from out of the ſaid ſhop and premiſes in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, two calico ſhirts, two linen ſhirts, and one pair of cotton hoſe, to wit, of the value of ſixteen ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James as co-partners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame, according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made deſault in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: *And* the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade

4th Breach.

5th Breach.

6th Breach.

trade or buſineſs of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain breaſt buckle, to wit, of the value of four ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain pair of knee buckles, to wit, of the value of three ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the twentieth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from and out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain oval box, with a ſtone in the top, to wit, of the value of three ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly ac-

7th Breach.

8th Breach.

count for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default:

9th Breach. And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the eighteenth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from and out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain pair of ſhoe buckles, to wit, of the value of fifteen ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three

10th Breach. ſhillings for ſuch neglect or default: And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on the twenty-ſecond day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from and out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain ſhirt pin, with a hair device thereon, to wit, of the value of three ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three

11th Breach. pounds and three ſhillings for ſuch neglect or default: And the ſaid Richard further ſays, that after the making of the ſaid articles, and whilſt the ſaid Richard and James uſed, exerciſed, and carried on the ſaid trade or buſineſs of pawnbrokers, to wit, on

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the twenty-ſixth day of January, in the year of Our Lord 1785, at the pariſh of St. Mary-le-bone aforeſaid, in the county aforeſaid, the ſaid James took from and out of the ſaid ſhop and premiſes, in the ſaid articles of agreement mentioned, where the ſaid Richard and James ſo uſed, exerciſed, and carried on their ſaid buſineſs, a certain ſtone ring, with a hair device, to wit, of the value of ſeven ſhillings, being part of the goods belonging to and in the cuſtody of the ſaid Richard and James, as copartners in the ſaid trade or buſineſs as aforeſaid, and did not ſet down the ſame upon a ſlate or book kept for that purpoſe, nor did duly account for the ſame according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, the ſaid James made default in ſetting down the ſame as aforeſaid, and did not duly account for the ſame as aforeſaid, contrary to the force, form, and effect of the ſaid articles of agreement, whereby the ſaid James forfeited and became liable to pay to the ſaid Richard the further ſum of three pounds and three ſhillings for ſuch neglect or default: [Add thirteen other breaches for articles taken at different times to the amount of ſeventy-five pounds twelve ſhillings] Yet the ſaid James hath not yet paid to the ſaid Richard the ſaid ſum of ſeventy-five pounds and twelve ſhillings, or any part thereof, according to the form and effect of the ſaid articles of agreement; but on the contrary thereof, he the ſaid James hath hitherto altogether refuſed, and ſtill doth refuſe, to pay the ſame, contrary to the force, form, and effect of the ſaid articles of agreement; and ſo the ſaid Richard ſaith, that he the ſaid James hath not kept with him the covenants ſo made between them as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Richard, the ſaid James hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid Richard of one hundred pounds; and therefore he brings ſuit, &c. Pledges, &c.

GEO. WOOD.

Declaration in covenant, for not paying the plaintiff a ſum of money advanced by him on certain premiſes, contrary to covenant.

WORCESTERSHIRE. Ann Hill complains of Thomas Conſtable, being, &c. of the ſheriff of the county of W. by virtue of a certain writ, &c. in a plea of breach of covenant; for that whereas, by a certain indenture made, &c. at, &c. between the ſaid Thomas of the one part, and the ſaid Ann of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid Thomas, and bearing date the day and year aforeſaid, the ſaid Ann now brings into court here), he the ſaid Thomas, for and in conſideration of the ſum of twenty-five pounds of lawful, &c. to him in hand paid by the ſaid Ann, did grant, bargain, ſell, and demiſe unto the ſaid Ann, her executors, adminiſtrators, and aſſigns, certain premiſes in the ſaid indenture particularly mentioned and ſet forth, to have and to hold the ſame, with the appurtenances unto the ſaid Ann, her executors, adminiſtrators, and aſſigns, from the day next before the date of the ſaid indenture, for

and during, and unto the full end and term of one thouſand years, without impeachment of or for any manner of waſte, yielding and paying therefore the rent of one pepper corn on the feaſt of St. Michael the Archangel in every year, if the ſame ſhould be lawfully demanded, provided always, and the ſaid indenture was and is upon condition, nevertheleſs, that if the ſaid Thomas, his heirs, executors, and adminiſtrators, ſhould well and truly pay, or cauſe to be paid unto the ſaid Ann, her executors, adminiſtrators, and aſſigns, the full ſum of twenty five pounds of lawful, &c. upon demand, without any deduction, defalcation, or abatement out of the ſame or, any part thereof, in reſpect of any taxes, charges, aſſeſſments, payments, or other matter, cauſe, or thing whatſoever taxed, charged, or impoſed, or to be taxed, charged or impoſed upon the premiſes aforeſaid, or of any of them, then and in ſuch caſe, and at all times from thenceforth, the ſaid indenture, and the term and eſtate thereby granted, and every clauſe and matter therein contained, ſhould ceaſe, determine, and be utterly void to all intents and purpoſes thereof, any thing in the ſaid indenture contained to the contrary notwithſtanding; and the ſaid Thomas did in and by the ſaid indenture for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, grant, and agree to and with the ſaid Ann, her executors, adminiſtrators, and aſſigns, in manner following, that is to ſay, that he the ſaid Thomas, his heirs, executors, or adminiſtrators, ſhould and would well and truly pay, or cauſe to be paid unto the ſaid Ann, her executors, adminiſtrators, and aſſigns, the ſum of twenty-five pounds, at the time and in manner and form aforeſaid, without any deduction or abatement out of the ſame, or any part thereof, for taxes or otherwiſe as aforeſaid, as by the ſaid indenture, reference being thereto had, will amongſt other things more fully appear: And the ſaid Ann in fact further ſaith, that although ſhe the ſaid Ann after the making of the ſaid indenture, and before the exhibiting of the bill of her the ſaid Ann in this behalf, to wit, on, &c. did requeſt and demand payment of, and then and there required the ſaid Thomas to pay to her the ſaid Ann the ſaid ſum of twenty-five pounds in the ſaid indenture mentioned; yet the ſaid Thomas did not when the ſaid ſum of twenty-five pounds was ſo demanded and required of him as aforeſaid, pay, or cauſe to be paid unto her the ſaid Ann the ſaid ſum of twenty-five pounds, or any part thereof, but then and there wholly refuſed ſo to do, and ſuffered and permitted the ſame to remain and continue, and the ſame is ſtill wholly due, owing, in arrear, and unpaid from the ſaid Thomas to the ſaid Ann, contrary to the tenor and effect, true intent, and meaning of the aforeſaid indenture, and the covenant of the ſaid Thomas in that behalf made as aforeſaid, to wit, at, &c.; and ſo the ſaid Ann ſaith, that the ſaid T. although often requeſted, hath not kept his ſaid covenant ſo by him made with the ſaid Ann as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Ann hath hitherto wholly refuſed, and ſtill doth refuſe, to the

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damage of the ſaid Ann of fifty pounds, for which ſhe brings her ſuit, &c.

ON CHARTER-PARTIES OF AFFREIGHTMENT.

Declaration for demurage at the unloading ports, in each of three different voyages.

LONDON, *ſſ.* William Webſter complains of Jonathan Blagden, &c. of a plea of breach of covenant; for that whereas, by a certain deed of charter-party of affreightment made on, &c. to wit, at, &c. between the ſaid William (by the name of William Webſter, maſter of the good ſhip or veſſel called the Rachael, of Witby, of the burthen of three hundred and ſixty tons or thereabouts, now lying in the River Tyne), of the one part, and the ſaid Jonathan (by the name of Jonathan Blagden, of Newcaſtle-upon-Tyne, and company, merchants, freighter of the ſaid ſhip), of the other part (the counterpart of which ſaid charter-party of affreightment, ſealed with the ſeal of the ſaid Jonathan, he the ſaid William now brings here into court, the date whereof is the ſame day and year aforeſaid), it is witneſſed that the ſaid William Webſter had that day letten the ſaid ſhip to freight for three voyages from Shields to London, and the freighter had hired the ſame in manner and form following, that is to ſay, that the ſaid ſhip then was, and ſhould during the ſaid voyage, be at the expence of the ſaid William Webſter, or his aſſigns, kept ſtaunch, tight and ſtrong, well manned, victualled, tackled, and provided in every reſpect fit for merchant ſervice, and particularly for performing ſuch voyages (the dangers and perils of the ſeas, reſtraints of princes and rulers, fire, and enemies, during the ſame, always excepted); and alſo that the ſaid William Webſter, or his aſſigns, ſhould forthwith receive and take in and on board the ſaid ſhip in the River Tyne a full and complete loading of coals, from the order, and of the goods and adventure of the ſaid freighter, or his aſſigns; and being ſo loaden the ſaid William Webſter with the ſhip and cargo ſhou'd, with the firſt opportunity of wind and weather, proceed directly for London, and on her arrival there deliver the ſame to the order of the ſaid freighter, at ſuch convenient place and places where the ſaid ſhip and cargo might ſafely come; and alſo that the ſaid ſhip ſhip ſhould, for her loading and delivery each voyage, lie the full ſpace of twelve lawful working days, if required, and ſo to end the ſaid intended voyage or voyages; in conſideration of which the ſaid freighter did thereby covenant and agree, not only to load and put on board the ſaid ſhip the ſaid cargo or cargoes as aforeſaid, and to receive or cauſe the ſame to be received from on board her each voyage at London as aforeſaid, and within the days and times limited for her loading and delivery each voyage as aforeſaid, but alſo ſhould and would pay or cauſe

to be paid unto the ſaid William Webſter, or his aſſigns, upon the ſafe delivery of each cargo as aforeſaid, in full for freight and hire of the ſaid ſhip for the ſaid voyage or voyages, at and after the rate of ſeven ſhillings ſterling a chaldron for every chaldron of coals (London meaſure) which ſhould be taken in and on board the ſaid ſhip and delivered during the ſaid voyages as aforeſaid, and all charges upon and for the ſaid cargo or cargoes, except trimming, keelman's beer, pilotage, and delivery, together with the ſum of two pounds ten ſhillings ſterling *per* day to be paid day by day, as the ſame ſhould grow due for every day of the ſaid ſhip's detention over and above the days and times limited for her loading and delivery each voyage as aforeſaid; and that the ſaid William Webſter ſhould and would continue running as faſt as wind and weather would permit until theſe voyages were made and completed upon the terms and conditions above expreſſed; and alſo ſhould and would pay and diſcharge trimming, &c. and delivery during the ſaid voyages, as by the ſaid charter-party of affreightment (amongſt other things), reference being thereto had will more fully and at large appear: And the ſaid William Webſter further ſays, that at the time of the making the ſaid charter-party of affreightment, the ſaid ſhip was, and during all the ſaid three voyages in the ſaid charter-party and hereafter mentioned, was kept at the expence of him the ſaid William Webſter ſtaunch, tight and ſtrong, and well manned, victualled, tackled, and provided in every reſpect fit for merchant ſervice, and particularly for performing ſuch voyages (the dangers and perils of the ſeas, reſtraints of princes and rulers, fire, and enemies, during the ſame, excepted); and that he the ſaid William Webſter did forthwith, to wit, on, &c. begin to receive and take in and on board the ſaid ſhip, to wit, in the River Tyne, in the ſaid charter-party mentioned, to wit, at, &c. a full complete loading of coals, from the order and of the goods and adventure of the ſaid freighter, or his aſſigns, for the firſt voyage of the ſaid three voyages; and that the ſaid ſhip did for her loading for that voyage lie a long ſpace of time, to wit, the ſpace of ſeven lawful working days, to wit, in the River Tyne as aforeſaid, being thereto required, and not ſooner diſpatched by the ſaid freighter; and that during the ſpace of ſeven days he the ſaid William Webſter did receive and take, and on the laſt day of the ſaid days, to wit, on, &c. did finiſh and complete the receiving and taking in and on board the ſaid ſhip in the River Tyne aforeſaid, a full and complete loading, from the order and of the goods and adventure of the ſaid freighter or his aſſigns; and the ſaid ſhip being ſo loaden, he the ſaid William Webſter with the ſaid ſhip and cargo afterwards, with the firſt opportunity of wind and weather, to wit, on, &c. proceeded directly for London, and did run and continue running with the ſaid ſhip as faſt as wind and weather would permit, until the ſaid voyage was made and compleated, and afterwards, to wit, on, &c. he the ſaid William Webſter, with the ſaid ſhip and cargo, arrived in

ſafety at London aforeſaid, to wit, in the river Thames there; and that he the ſaid William Webſter did, immediately after the arrival of the ſaid ſhip and cargo there, to wit, on, &c. give notice of the arrival of the ſaid ſhip and cargo there to the then factor and aſſigns of the ſaid Jonathan Blagden, and to whom the ſaid cargo of coals, ſo ſhipped by the ſaid Jonathan Blagden as aforeſaid, were by the ſaid Jonathan Blagden ordered and conſigned, and that the ſaid ſhip did there, to wit, at, &c. to wit, in the ſaid river of Thames there, the ſame being a convenient place there where the ſaid ſhip and cargo might ſafely come for the delivery of the ſaid cargo, to the order of the ſaid freighter, did lye a long ſpace of time, to wit, for the ſpace of eleven working days, being thereto required, and not being ſooner diſpatched by the ſaid Jonathan, his factor, or aſſigns, for, in, or about the unloading and delivery of the ſaid cargo to the order of the ſaid freighter, and that he the ſaid William Webſter did, during all that time ſafely deliver all the ſaid cargo to the order of the ſaid freighter there, to wit, at, &c. to wit, in the ſaid river of Thames, the ſame being a convenient place where the ſaid ſhip and cargo might ſafely come, and ſo end the ſaid voyage, and did then and there, to wit, at, &c. on the laſt day of the ſaid eleven days, to wit, on, &c. pay and diſcharge trimmings, &c. during that voyage: And 2d Breach. the ſaid William Webſter further ſays, that the ſaid Jonathan Blagden by himſelf, his agents, factors, or aſſigns, did, in that voyage, keep and detain the ſaid ſhip on demurage, to wit, at, &c. and for a long ſpace of time, to wit, for the ſpace of five working days, in and about the loading, unloading and delivery of the ſaid cargo of coals, over and above the ſaid twelve lawful working days in the ſaid charter-party for that purpoſe mentioned; yet the ſaid J. B. did not, according to the tenor of the ſaid charter-party aforeſaid, and of his covenant by him in form aforeſaid made, during the ſaid five days of demurage, pay to the ſaid W. W. the ſaid ſum of two pounds ten ſhillings ſterling per day, day by day, during the ſaid five days of demurage, or any part thereof, or at any other time hitherto, but he to pay the ſame to the ſaid W. W. hath hitherto wholly refuſed and made default, contrary to the form and effect of the ſaid charter-party, and of the ſaid covenant of him the ſaid J. B. made in that behalf as aforeſaid; and the ſaid W. W. further ſays, that the ſaid ſhip ſo being kept at the expence of him the ſaid W. W. ſtaunch, &c. in every reſpect fit for merchant's ſervice, particularly for performing ſuch voyages as aforeſaid; and the ſaid firſt cargo being ſo delivered, and the ſaid firſt voyage ſo made as aforeſaid, he the ſaid W. W. did forthwith after the delivery of the ſaid cargo, and after ending the ſaid firſt voyage, and with the firſt opportunity of wind and weather, to wit, on, &c. ſail and proceed with the ſaid ſhip from London aforeſaid, to wit, out and from the ſaid river of Thames, there directly to and towards Shields aforeſaid, and afterwards, to wit,

on, &c. he the ſaid W. W. arrived in ſafety at Shields aforeſaid, in the ſaid river of Tyne there, and during all that time he the ſaid W. W. did run, and continue running with the ſaid ſhip ſo faſt as wind and weather would permit; and that he the ſaid W. W. did, immediately after the arrival of the ſaid ſhip there, to wit, on, &c. give notice of the arrival of the ſaid ſhip there to the ſaid Jonathan Blagden; and the ſaid W. W. further ſays, that after the ſaid ſhip was ſo arrived at, &c. in the river Tyne there, to wit, on, &c. he the ſaid W. W. did begin to receive and take in, and on board, &c. &c. &c. (ſame as before, ſaying, the ſecond of the ſaid three voyages, inſtead of the firſt, &c. &c.): And the ſaid W. W. further ſays, that the J. B. by himſelf, his agents, factors, or aſſigns did, in the ſaid laſt-mentioned voyage, keep and detain the ſaid ſhip on demurage, to wit, at, &c. a long ſpace of time, to wit, for the ſpace of twenty-five lawful working days, in and about the loading, unloading, and delivery of the ſaid laſt-mentioned cargo of coals, over and above the ſaid twenty lawful, &c. in the ſaid charter-party for that purpoſe mentioned; yet the ſaid J. B. did not, according to the ſaid charter-party aforeſaid, and of the covenant of him the ſaid J. B. ſo made as aforeſaid, during the ſaid twenty-five days of demorage, pay to the ſaid W. W. the ſaid ſum of two pounds ten ſhillings per day, &c. during the ſaid twenty-five days of demurage, or any part thereof, but he to pay the ſame to the ſaid W. W. hath, &c. contrary, &c. and of the aforeſaid covenant of him ſaid J. B. made in that behalf as aforeſaid; and ſo the ſaid W. W. ſays, that the ſaid J. B. although often requeſted, hath not kept with him the ſaid W. W. the covenant made by the ſaid J. B. with him the ſaid W. W. but hath broke the ſame, and to keep the ſame with him the ſaid W. W. hath hitherto wholly refuſed, and ſtill refuſes to the ſaid W. W. his damage of one hundred pounds; and therefore, &c. &c.

3d Breach.

In the Common Pleas.

Covenant by maſter of a ſhip againſt the freighters on a charter party, for not fully loading her, and not paying full freightage, and for primage, &c.

LONDON *ſſ.* Mark Gregory, late of London, merchant, and John Turnbull, late of the ſame place, merchant, were ſummoned to anſwer George Paſſmore of a plea that they keep with the ſaid George the covenants made between the ſaid Mark and John; and the ſaid George, according to the form and effect of a certain charter party of affreightment made between them, &c.; and thereupon the ſaid George, by Edward Woolſtonecraft his attorney, ſays, that whereas, by a certain charter-party of affreightment made on the thirtieth day of September, in the year of Our Lord 1783, at London, to wit, in the pariſh of St. Mary-le-Bow, in the ward of Cheap, between the ſaid George, by the name and addition of George Paſſmore, maſter and owner of the brigantine called the London, of the burthen of one hundred

and

and fifty tons or thereabouts, and now in the river of Thames, of the one part, and the ſaid Mark and John of the other part (one part of which ſaid charter-party, ſealed with the ſeal of the ſaid Mark and John, the ſaid George now brings here into court, the day whereof is the day and year aforeſaid), it is witneſſed that the ſaid maſter and owner, for the conſideration thereafter mentioned, did thereby covenant, promiſe, and agree to and with the ſaid merchants, the executors, adminiſtrators, and aſſigns, that the ſaid brigantine, London, being in a fit and proper condition for the voyage thereinafter mentioned, ſhould and would, as ſoon as convenient, proceed to Gibraltar, and when unloaded there proceed to Malaga and there value himſelf, or Meſſrs. Mettinez and Co. merchants of the ſaid place, and being admitted to free pratigue, ſhould tarry, if required, forty-eight hours for orders to load there and at Valiz Malaga, on the terms thereinafter mentioned, to ſay, for every ton of Malaga tonnage of ten cheſts of lemons (and other goods in proportion of London), three pounds ten ſhillings *per* ton, and after that rate for other goods in proportion, according to the cuſtom at Malaga, provided the ſame brig London could be fully loaded at Malaga and Valiz Malaga aforeſaid; and if it ſhould ſo happen that the ſaid ſhip could not be provided with full cargo at Malaga or Valiz Malaga, then and in ſuch caſe the maſter agreed to proceed with the ſaid ſhip to Alicant or Barcelona, and there receive orders from the ſaid freighter's correſpondents to load a full and complete cargo, at any two loading places within the diſtrict of Alicant or Barcelona, at and after the rate of forty ſhillings *per* ton of baulla or raiſins in baſkets or caſks, always allowing twenty hundred weight of each to the ton at the king's beam, with the uſual cuſtom of tare and draft, and likewiſe fourteen bags of nuts to the ton, and two pipes of wine or brandy to the ton; and the aforeſaid maſter agreed to deliver the ſaid cargo, if required by the freighters or their correſpondents, agents, factors, or aſſigns, in the iſland of Guernſey or the port of London, paying freight for the ſaid goods to either of thoſe places, at and after the rate of forty ſhillings *per* ton: but ſhould the freighters or their correſpondents order all or any part of the ſaid cargo to be delivered at Falmouth or Plymouth, then, in ſuch caſe, the freighters obliged themſelves to pay freight for every ton of goods ſo delivered at Falmouth or Plymouth, forty-five ſhillings, with two thirds pilotage, quarantine, and port charges, and the ſaid charges to commence at Malaga, with five *per cent.* primage to the maſter, the freighters to be allowed forty days to load and unload, and ten days over and above, if required on demurage, at and after the rate of three pounds *per* day, day by day, as the ſame ſhould grow due, as by the ſaid charter-party more fully appears: And the ſaid George in fact ſaith, that the ſaid ſhip in the ſaid charter-party mentioned, after the making the ſaid charter-party, to wit, on the fifth day of October, in the year aforeſaid, being in fit and proper condition

dition, departed and ſet ſail from and out of the river of Thames upon the ſaid intended voyage, and afterwards arrived at Gibraltar and unloaded there, and afterwards, to wit, on the twenty-ninth day of October, in the year aforeſaid, arrived at Malaga in the ſaid charter-party mentioned; and the ſaid George afterwards, to wit, on the ſame day and year laſt aforeſaid, gave notice thereof to the ſaid Meſſrs. Mettinez and Co. in the ſaid charter-party mentioned, and the ſaid ſhip remained and continued there for orders to load, and was kept and detained there by the ſaid aſſigns of the ſaid Mark and John for a long time, to wit, for the ſpace of fifty days, and afterwards, to wit, on the twenty-ſixth day of January, in the year aforeſaid, the ſaid George did receive into and on board his ſaid ſhip at Malago aforeſaid, from the ſaid Meſſrs. Mettinez and Co. divers goods and merchandizes, being all the goods and merchandizes which the ſaid Meſſrs. Mettinez and Co. thought fit to put on board her, and afterwards, to wit, on the twenty-ſeventh day of January, in the year of Our Lord 1784, the ſaid ſhip departed and ſet ſail from Malaga aforeſaid, with the ſaid goods and merchandizes on board her as aforeſaid, on her ſaid voyage towards London aforeſaid, and afterwards, to wit, on the fifth day of March, in the year laſt aforeſaid, arrived at London aforeſaid, whereof the ſaid Mark and John afterwards, to wit, on the ſame day and year laſt aforeſaid, there had notice; and the ſaid ſhip did then and there end her ſaid voyage, and the ſaid Mark and John did not then and there immediately unload the ſaid ſhip, but kept and detained the ſaid ſhip for a long time, to wit, until the fifteenth day of September then next following, and there fully unloaded the ſame: And, although the ſaid George hath always well and truly obſerved, performed, fulfilled, and kept all and ſingular the covenants, claims, and agreements in the ſaid charter-party contained, on his part and behalf to be obſerved, performed, fulfilled, and kept; yet, proteſting that the ſaid Mark and John have not well and truly obſerved, performed, fulfilled and kept, any of the covenants, clauſes, and agreements in the ſaid charter-party contained, on their part and behalf to be performed and fulfilled: In fact the ſaid George ſaith, that the ſaid Mark and John, and their aſſigns, kept and detained the ſaid ſhip on demurage ten days over and above the forty days in and by the ſaid charter-party allowed for the loading and unloading the ſaid ſhip, as by the ſaid charter-party they lawfully might; by reaſon whereof the ſum of thirty pounds became due and payable from the ſaid Mark and John to the ſaid George for the ſame: Yet the ſaid Mark and John, although often requeſted, have not paid the ſaid thirty pounds, or any part thereof, to the ſaid George, but have hitherto altogether refuſed ſo to do, and ſtill do refuſe, contrary to the form and effect of the ſaid charter-party, and of the ſaid covenant of the ſaid Mark and John ſo made in that behalf as aforeſaid: And the ſaid George further ſays, that although the ſaid Meſſrs. Mettinez and Co. the aſſigns of the ſaid

Mark

Mark and John, did put and load divers goods and merchandizes on board the ſaid ſhip as aforeſaid, to be brought from Malaga aforeſaid, and although the ſaid ſhip would have carried other and a great many more goods and merchandizes from Malaga aforeſaid to London aforeſaid, yet the ſaid Mark and John and the ſaid Meſſrs. Mettinez and Co. the aſſigns of the ſaid Mark and John, although often requeſted ſo to do, did not fully and compleatly load the ſaid ſhip, but wholly neglected and refuſed ſo to do, contrary to the form and effect of the ſaid charter-party, and of the covenant of the ſaid Mark and John ſo made in that behalf as aforeſaid: And the ſaid George further ſays, that the ſaid primage on the ſaid goods and merchandizes, ſo loaded on board the ſaid ſhip as aforeſaid, amounting to a large ſum of money, to wit, to the ſum of eighteen pounds fifteen ſhillings, and that two third parts of the pilotage and port charges of the ſaid ſhip, during the ſaid laſt-mentioned voyage, amounting to another large ſum of money, to wit, the ſum of forty pounds, of which ſaid premiſes the ſaid Mark and John afterwards, to wit, on the twentieth day of April, in the year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice: Yet the ſaid Mark and John, although often requeſted, have not, nor hath either of them paid the ſaid ſeveral ſums of money ſo reſpectively due as laſt aforeſaid, but have hitherto altogether refuſed ſo to do, and the ſame remains due and unpaid to the ſaid George, contrary to the form and effect of the ſaid charter-party, and of the ſaid covenant of the ſaid Mark and John ſo made in that behalf as aforeſaid; and ſo the ſaid George ſaith, that the ſaid Mark and John have not kept with him the covenant made between them as aforeſaid, but have broken the ſame, and to keep the ſame with the ſaid George have hitherto altogether refuſed, and ſtill do refuſe, to the damage of the ſaid George of one hundred pounds; and therefore he brings his ſuit, &c.

W. BALDWIN.

And the ſaid Mark and John, by John Gill their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid George ought not to have or maintain his aforeſaid action againſt them; becauſe they ſay that the ſaid charter-party on the ſaid deed mentioned, is not the deed of them the ſaid Mark and John, and of this they put themſelves upon the country, &c. Plea, 1ſt, general iſſue.

And for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe lately made and provided, the ſaid Mark and John ſay, that the ſaid George ought not to have or maintain his aforeſaid action againſt them; becauſe they ſay that the ſaid brig, London, in the ſaid charter-party and in the ſaid declaration alſo mentioned, being in ſuch fit and proper condition as in the ſaid declaration is mentioned, did not, as ſoon as convenient, proceed to Gibraltar, and when unloaded there proceed to Malaga, according 2d, That the ſhip was detained on her arrival at Malaga, upon quarantine, and that goods could neither be loaded nor unloaded during that time.

cording to the form and effect of the ſaid charter-party, and of the ſaid covenant of the ſaid George therein in that behalf contained as aforeſaid; but on the contrary thereof the ſaid brig having been, before her ſaid departure from the river of Thames in the ſaid deed mentioned, loaden with and having received on board her divers large quantities of goods and merchandizes to be carried in the ſaid brig to Gibraltar and Malaga aforeſaid, for and upon account of other perſons than the ſaid Mark and John, without the conſent of the ſaid Mark and John, afterwards and after her arrival at Gibraltar aforeſaid, to wit, on the thirtieth day of October, in the year laſt aforeſaid, departed therefrom, the ſaid goods and merchandizes ſo before then loaden and being on board the ſaid brig, on ſuch account as laſt aforeſaid, ſtill continuing on board the ſame, and with the ſame goods and merchandizes ſo then loaden and continuing on board the ſaid brig as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, at Malaga aforeſaid, arrived: And the ſaid Mark and John in fact ſay, that by reaſon of the ſaid goods and merchandizes ſo brought in the ſaid brig as aforeſaid, to Malaga aforeſaid, the ſaid brig was, immediately upon her arrival at Malaga aforeſaid, neceſſarily there detained upon quarantine for the ſpace of forty days, thereafter and during all that time the ſaid goods and merchandizes, ſo then loaden and being on board the ſaid brig as aforeſaid, could not nor might be unloaden therefrom, nor could nor might any other goods and merchandizes, during all the ſaid ſpace of forty days next after the ſame arrival of the ſaid brig at Malaga aforeſaid, be loaden or put on board the ſaid brig, for or on the account of the ſaid Mark and John, or of any other perſon whatſoever, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and this the ſaid Mark and John are ready to verify; wherefore they pray judgment if the ſaid George ought to have or maintain his aforeſaid action againſt them, &c. And the ſaid Mark and John, for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe lately made and provided, as to the ſaid breach of covenant firſtly above aſſigned, ſay that the ſaid George ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay that they the ſaid Mark and John, or their aſſigns, did not ever keep or detain the ſaid ſhip on demurrage in manner and form as the ſaid George has in that breach by him firſtly above aſſigned alledged, and of this the ſaid Mark and John put themſelves upon the country; and that the ſaid Mark and John for further plea in this behalf, by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe lately made and provided, as to the ſaid breach of covenant ſecondly above aſſigned, ſay that the ſaid George ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay that they and the ſaid Meſſrs. Mettinez and Co. the aſſigns of the ſaid Mark and John, did fully and completely load

To the firſt breach, 3d, they did not keep the ſhip on demurrage.

To the ſecond breach, 4th, that their aſſigns did fully load at Malaga.

load the ſaid ſhip at Malaga aforeſaid, according to the form and effect of the ſaid charter-party, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and of this, &c. And the ſaid Mark and John for further plea in this behalf, by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe lately made and provided, as to the ſaid breach of covenant ſecondly above aſſigned, ſay, that the ſaid George ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay that true it is, that the ſaid ſhip would have carried more goods and merchandizes from Malaga aforeſaid to London aforeſaid, than were put on board the ſaid ſhip by the ſaid Meſſrs. Mettinez and Co. the ſaid aſſigns of the ſaid Mark and John, but for plea in this behalf the ſaid Mark and John ſay, that it did ſo happen that the ſaid ſhip could not be provided with a full cargo at Malaga or Valiz Malaga, in the ſaid charter-party mentioned, whereof the ſaid George, after the loading on board the ſaid ſhip at Malaga aforeſaid, the ſaid goods and merchandizes in the ſaid deed mentioned to have been there loaden on board the ſame, to wit, on the twenty-ſeventh day of January, in the year of Our Lord 1784, at Malaga, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, had notice from the ſaid Meſſrs. Mettinez and Co. the ſaid aſſigns of the ſaid Mark and John there; and the ſaid Meſſrs. Mettinez and Co. the aſſigns of the ſaid Mark and John, there offered to the ſaid George to provide his ſaid ſhip with a full cargo, if he the ſaid George would proceed with his ſaid ſhip to Alicant or Barcelona, and there receive orders from the correſpondents of the ſaid Mark and John, for the loading a full and complete cargo, according to the form and effect of the ſaid charter-party, to wit, at London aforeſaid; but the ſaid George then and there, and always afterwards, wholly refuſed ſo to do, and inſtead thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at Malaga, did complete the loading of the ſaid ſhip with divers other goods and merchandizes by him taken on board there, upon freight for and upon the account of other perſons than the ſaid Mark and John, or their aſſigns, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and this the ſaid Mark and John are ready to verify; wherefore they pray judgment if the ſaid George ought to have or maintain his aforeſaid action againſt them as to the ſaid breach of covenant by him ſecondly above aſſigned, &c. And the ſaid Mark and John for further plea in this behalf, by like leave, &c. as to the ſaid breach of covenant laſtly above aſſigned, ſay, that the ſaid George ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay that no ſuch ſums of money as are in that breach mentioned, nor any of them, nor any part thereof, ever became due or payable from the ſaid Mark and John to the ſaid George, for or on account of the ſame primage, pilotage and port-charges in the ſaid breach mentioned, or any of them, in manner and form as the ſaid George has in that breach by him

To the ſaid ſecond breach, 5th, that goods could not be procured completely to load her at Malaga, &c; but they offered to load her completely if he would have proceeded to Barcelona, which he would not do, but made up the loading with other perſon's goods.

6th, To the laſt breach, that no ſuch ſum became due for primage, &c.

laſtly above aſſigned alledged; and of this the ſaid Mark and John put themſelves upon the country, &c.

NASH GROSE.

Covenant on a charter-party of affreightment for the full freight, when the freighter would only pay a part.

LONDON, to wit. George Faith complains of William De Vie Tuper, being, &c. of a plea of breach of covenant: for that whereas, by a certain charter-party of affreightment made on the fifteenth day of June, in the year of Our Lord 1786, to wit, at London aforeſaid, at the pariſh of St. Mary-le-Bow, in the ward of Cheap, between the ſaid George Faith (by the name and addition of George Faith, maſter of the good brig Brittania, of the burthen of three hundred tons or thereabouts) of the one part, and the ſaid William (by the name and addition of William De Vie Tuper, acting for and on behalf of Meſſrs. Reſner and Tuper of Barcelona, in the kingdom of Spain), of the other part (one part of which ſaid charter-party of affreightment, ſealed with the ſeal of the ſaid William De Vie Tuper, the ſaid George now brings here into court, the date whereof is the day and year aforeſaid): It is witneſſed that the ſaid George Faith, for the conſideration thereinafter mentioned, did thereby promiſe and agree to, and with the ſaid William De Vie Tuper, his executors, adminiſtrators, and aſſigns, that the ſaid brig or veſſel was of the burthen aforeſaid; and being tight, ſtaunch, and ſtrong, and every way properly fitted for the voyage thereinafter mentioned, he the ſaid George Faith had granted and let, and the ſaid William De Vie Tuper had taken and hired the ſame on the terms and conditions following, that is to ſay, the ſaid George Faith ſhould be at the bay of Roſas, in the kingdom of Spain, on or before the middle of October then next enſuing, wind and weather permitting, and then conſign himſelf and veſſel unto the agent or correſpondent of the ſaid freighter, and there hold himſelf in order to take in ten tons, or as much more as ſhe the ſaid brig could conveniently ſtow and take in, of cork, and when ſo loaded ſhould proceed, wind and weather permitting, for the port of London, and there make a true delivery of his ſaid cargo of cork; and the ſaid maſter further agreed to allow the ſaid freighter thirty running days for loading and unloading the ſaid cargo of cork; in conſideration whereof the ſaid freighter did thereby, for himſelf, his executors, adminiſtrators, and aſſigns, agree to pay, or cauſe to be paid, on the true delivery of the ſaid cargo of cork in London, ſix pounds ſterling per ton (at the king's beam), with two-thirds of all pilotage, quarantine, and port charges, provided always it ſhould and might be lawful to and for the ſaid freighters, his executors, adminiſtrators, and aſſigns, to retain and keep the ſaid veſſel on demurrage at the bay of Roſas and London ten days if required, over and above the days limited, he or they paying, or cauſe to be paid unto the ſaid maſter, three pounds per day, day by day, as the ſame ſhould grow due, any thing therein contained to

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the contrary in anywiſe notwithſtanding, as by the ſame charter-party of affreightment, relation being thereunto had, will (amongſt other things) more fully and at large appear: And the ſaid George in fact ſaith, that at the time of the making of the ſaid charter-party of affreightment, the ſaid brig or veſſel therein mentioned was of the burthen aforeſaid, and tight, ſtaunch, and ſtrong, and every way properly fitted for the voyage aforeſaid, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid George aforeſaid in fact further ſaith, that the ſaid brig or veſſel being of ſuch burthen, and ſo tight, ſtaunch, ſtrong, and fitted as aforeſaid, he the ſaid George was with the ſaid brig or veſſel aforeſaid at the bay of Roſas, in the kingdom of Spain aforeſaid, before the middle of October then next enſuing, to wit, on the twenty-firſt day of September in the year aforeſaid; and that the ſaid George did then and there conſign himſelf and the ſaid brig or veſſel unto the agent or correſpondent of the ſaid freighter, and did there hold himſelf in order to take in ten tons, or as much more as ſhe the ſaid brig could conveniently ſtow and take in of cork, divers, to wit, fifteen running days; and although the ſaid brig or veſſel could and might, during that time, there have conveniently ſtowed and taken in, and the ſaid George was, during that time, there ready and willing to ſtow and take in, and would have ſtowed and taken in and on board of the ſaid brig or veſſel, divers, to wit, ſixty-five tons of cork, whereof the agent or correſpondent of the ſaid William there had notice, and was there requeſted by the ſaid George to load and put in and on board of the ſaid brig or veſſel as much cork as ſhe could conveniently ſtow and take in, according to the form and effect of the ſaid charter-party of affreightment; and although the agent or correſpondent of the ſaid William at the bay of Roſas aforeſaid did, during that time, there load and put in and on board of the ſaid brig or veſſel, divers, to wit, thirty-five tons of cork, yet the ſaid George in fact further ſaith, that the ſaid William, his agent or correſpondent, did not, nor would at any time within or during the time aforeſaid, load or put in or on board of the ſaid brig or veſſel the remainder of the cork which ſhe ſhould and might ſo as aforeſaid have conveniently ſtowed and taken in, or any part thereof; but during all the time aforeſaid wholly neglected and refuſed ſo to do, contrary to the form and effect of the ſaid charter-party of affreightment, and of the ſaid covenant of the ſaid William, by him in that behalf made as aforeſaid; by reaſon whereof the ſaid George, at the expiration of the ſaid fifteen days, was forced and obliged to, and did ſet ſail and proceed with the ſaid brig or veſſel from the bay of Roſas aforeſaid, to the port of London aforeſaid, without ſtaying or taking in any more than the ſaid thirty-five tons of cork; and that afterwards, to wit, on the fifth day of November in the year aforeſaid, the ſaid George did arrive with his ſaid brig or veſſel at the port of London aforeſaid, and did there make a true delivery of the ſaid cork ſo loaded and put

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on board her as aforeſaid, whereof the ſaid William, after ſuch delivery of the ſaid laſt-mentioned cork, to wit, on the twentieth day of November in the year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice, and by reaſon thereof the ſaid William then and there became liable to pay, and ought to have paid to the ſaid George, the ſum of three hundred and ſixty pounds (the ſame being at and after the rate of ſix pounds ſterling *per* ton for each and every of the ſaid ſixty-five tons of cork which the ſaid George could and might, and would have ſtowed and taken in and on board the ſaid brig or veſſel, and part whereof was ſo loaded and put in and on board thereof as aforeſaid, together with two-third parts of all pilotage, quarantine, and port-charges of the ſaid brig or veſſel during the ſaid voyage; and although ſuch pilotage, quarantine, and port-charges did amount to a large ſum of money, to wit, the ſum of twenty pounds of lawful money of Great Britain; whereof the ſaid William afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice; yet the ſaid William (although often requeſted) had not paid to the ſaid George the ſum of three hundred and ſixty pounds, together with the amount of the pilotage, quarantine, and port-charges aforeſaid, or any part thereof, but hath hitherto wholly neglected and refuſed ſo to do, contrary to the form and effect of the ſaid charter-party of affreightment, and of the ſaid covenant of the ſaid William by him in that behalf made as aforeſaid; and ſo the ſaid George in fact ſaith, that the ſaid William (although often requeſted) hath not kept his ſaid covenant ſo by him made with the ſaid George in that behalf as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid George hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to the damage of the ſaid George of five hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c.

Drawn by MR. TIDD.

Declaration for demurage, at both loading and unloading po againſt the freighter.

LONDON, *ſſ.* Richard Moorſon complains of Anthony Brough, being, &c.: for that whereas by a certain charter-party of affreightment, indented and made on, &c. to wit, at, &c. by the ſaid Richard (by the name and addition of Richard Moorſon, of London, owner of the good ſhip or veſſel called the Sally, of the burthen of four hundred and ſeventy tons or thereabouts, now in the river Thames, whereof John Akenhead is maſter), of one part, and the ſaid Anthony (by the name and addition of Anthony Brough, of London, merchant), of the other part (one of which ſaid charter-parties of affreightment, ſealed with the ſeal of the ſaid Anthony, the ſaid Richard now brings here into court, the date whereof is the ſame day and year aforeſaid): It was witneſſed that the ſaid owner, for the conſiderations thereinafter mentioned, had granted and letten the ſaid ſhip to freight unto the

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ſaid Anthony, who had accordingly hired and taken the ſame for the voyage, and upon the terms and conditions following: whereupon firſt the ſaid owner did thereby, for himſelf, his executors and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid freighter, his executors, adminiſtrators and aſſigns, that the ſaid ſhip ſhould, with all convenient ſpeed, depart from and out of the river Thames, and directly, as wind and weather would permit, ſail and proceed to Archangel, or ſo near thereunto as ſhe could ſafely come; where being arrived, and being tight, ſtaunch, ſtrong, and well manned, provided, and furniſhed, fitting for the voyage thereafter mentioned, and ready to load goods, ſhe ſhould ſtay thirty running days, if required, to commence and be accounted from the day of the ſaid maſter's giving notice to the correſpondents of the ſaid freighter at Archangel of the ſhip's arrival at that port, and of her being ready to load goods; during which time the ſaid maſter ſhould load, receive, and take on board the ſaid ſhip, of and from the ſaid freighter, his factors or aſſigns, one hundred and fifty-five tons of iron, eighty tons of tallow, fifty thouſand matts, and five thouſand ſtandard deals, or other goods equal to the ſaid quantity of deals, or as much of the goods before deſcribed as the ſaid ſhip would reaſonably ſtow and carry in her, beſides her tackle, apparel, proviſions, and furniture; and the ſaid thirty days being expired, and the ſaid ſhip there loaded and diſpatched, ſhe ſhould directly, as wind and weather would permit, ſail and proceed to the port of London, and there ſtay twenty running days, if required, during which time the ſaid maſter ſhould unload and deliver unto the ſaid freighter, his factors or aſſigns, all the goods of him or them loaded on board the ſaid ſhip at Archangel aforeſaid, and ſo on ſuch delivery to end her voyage, the perils and dangers of the ſeas, and reſtraints of princes and rulers during the ſaid voyage, always excepted; and further, the ſaid owner did agree, that the ſaid ſhip ſhould be addreſſed to the correſpondents of the ſaid freighter at Archangel, in conſideration whereof the ſaid freighter did thereby, for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree, to and with the ſaid owner, his executors, adminiſtrators and aſſigns, that he the ſaid freighter, his executors, adminiſtrators and aſſigns, ſhould and would load and put on board the ſaid ſhip at Archangel aforeſaid, one hundred and fifty-five tons of iron, &c. or as much of all the ſaid goods as the ſaid ſhip could reaſonably ſtow and carry as aforeſaid, and at the port of London unload and diſcharge the ſame out of her the whole within the ſeveral days above limited for doing thereof, or days of demurage therein after mentioned; and alſo well and truly pay, or cauſe to be paid unto the ſaid owner, his executors, adminiſtrators and aſſigns, in full, for the freight and hire of the ſaid ſhip for the voyage aforeſaid, the full and juſt ſum of ſix hundred pounds ſterling, and pay the ſame in manner following, to wit, one half part thereof at and immediately on the unloading and delivery of the ſaid goods at the port of London, and the remainder within three months

then next following, with average accuſtomed, and two-third parts of all port-charges and pilotage that ſhould ariſe on the ſaid ſhip at and from Archangel to the time ſhe ſhould be entirely unloaded of the ſaid goods; and the ſaid freighter did alſo agree, that after the ſeveral quantities of goods above-mentioned ſhould be ſhipped and properly ſtowed on board the ſaid ſhip, the ſaid maſter might load and take on board her ſuch goods as he ſhould think proper, provided always, that it ſhould and might be lawful to and for the ſaid freighter, his factors, or aſſigns, to keep the ſaid ſhip on demurage, at his loading and unloading ports, ten days at each place if required, over and beſides the ſeveral days above limited for her ſtay at the ſame, he or they paying unto the ſaid owner, or his aſſigns, the ſum or value of three pounds ten ſhillings ſterling *per* day, day by day, as the ſame ſhould grow due, any thing aforeſaid to the contrary notwithſtanding, as in and by the ſaid charter-party of affreightment (relation being thereunto had) will amongſt other things more fully and at large appear: And the ſaid Richard in fact ſaith, that the ſaid ſhip did, with all convenient ſpeed, next after the making of the ſaid charter-party of affreightment, to wit, on, &c. depart from and out of the river Thames, and did directly, as wind and weather would permit, ſail and proceed to Archangel in the ſaid charter-party of affreightment mentioned, and that the ſaid ſhip or veſſel being there arrived, being tight, ſtaunch, and ſtrong, and well manned, provided, and furniſhed, fitting for the voyage in the ſaid charter-party of affreightment mentioned, and ready to load goods; the ſaid maſter did afterwards, to wit, on, &c. give notice to the correſpondents of the ſaid freighter at Archangel aforeſaid (to whom the ſaid ſhip was addreſſed), of the ſaid ſhip's arrival at that port, and of her being ready to load goods in manner aforeſaid: And the ſaid Richard in fact further ſays, that the ſaid ſhip being thereto required, did ſtay at Archangel aforeſaid thirty running days, commencing and being accounted from the day of the ſaid maſter's giving ſuch notice as aforeſaid (being the time above limited for her ſtay at the ſame); and alſo eight days over and beſides the thirty running days (being ſo long kept on demurage there by the ſaid Anthony, his factors or aſſigns, during which reſpective times the ſaid maſter did load, receive, and take on board the ſaid ſhip of and from the ſaid Anthony, his factor or aſſigns, a certain cargo, conſiſting of one hundred and fifty-five tons, &c. and that, at the expiration of the reſpective times aforeſaid, the ſaid ſhip being there loaded and diſpatched, did directly, as the wind and weather would permit, ſail and proceed to the port of London, and there, to wit, at the port of London aforeſaid (being thereto required), did ſtay twenty running days (being the time above limited for her ſtay at the ſame), and alſo ſix days over and beſides the ſaid twenty running days (being ſo long kept on demurage there by the ſaid Anthony, his factors and aſſigns), during which ſaid laſt-mentioned times, the ſaid maſter unloaded and delivered unto the ſaid Anthony, his factors or aſſigns, all the goods

goods by him or them loaded on board the ſaid ſhip at Archangel aforeſaid, and ſo on ſuch delivery ended her ſaid voyage, to wit, at, &c.; and although the ſaid Richard, from the time of the making of the ſaid charter-party of affreightment, hitherto hath always well and truly obſerved, performed, and fulfilled, and kept all and ſingular the covenants, clauſes, and agreements therein contained on his part and behalf to be obſerved, performed, fulfilled, and kept; yet, proteſting that the ſaid Anthony hath not well and truly obſerved, performed, and kept any thing in the ſame contained on his part and behalf to be obſerved, performed, fulfilled, and kept; in fact the ſaid Richard ſaith, that the ſaid Anthony did not, during the reſpective times the ſaid ſhip was ſo kept on demurage as aforeſaid, or either of them, pay unto the ſaid Richard or his aſſigns the ſum or value of three pounds ten ſhillings ſterling *per* day, day by day, as the ſame did grow due, or any part thereof, nor hath he at any time ſince hitherto paid the ſame, or any part thereof to the ſaid Richard, but hath hitherto wholly refuſed and neglected ſo to do, and therein wholly failed and made default, contrary to the form and effect of the ſaid charter-party of affreightment, and of the ſaid covenant of the ſaid Anthony by him in that behalf made with the ſaid Richard in manner and form aforeſaid, to wit, at, &c.: and ſo the ſaid Richard in fact ſays, that the ſaid Anthony (although often requeſted, &c.) hath not kept his ſaid covenant ſo by him made with the ſaid Richard as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Richard hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to the damage, &c. of eighty pounds; and therefore, &c. *Drawn by* MR. TIDD.

LONDON, *ff.* Samuel Hartley, late of the city of London, merchant, was ſummoned to anſwer William Smith, of a plea, that he keep with him the covenants made between the ſaid William and the ſaid Samuel, according to the force, form, and effect of a certain charter-party of affreightment thereof made between them, &c.: and thereupon the ſaid William, by N. G. his attorney, complains, that whereas by a certain charter-party of affreightment, &c. &c. (ſet forth the charter-party), as by the ſaid charter-party of affreightment, and the memorandum thereunder written (reference being thereunto had) will more fully and at large appear: And the ſaid William in fact ſaith, that the ſaid ſhip was afloat before the ſaid firſt day of December 1782, and that after the making of the ſaid charter-party of affreightment, he the ſaid William did receive and take on board the ſaid ſhip (that is to ſay, in the port of London, certain lawful merchandizes, being all ſuch lawful merchandize as the ſaid freighter or his aſſigns did think fit to ſhip on board thereof), to be carried and conveyed in the ſaid ſhip or veſſel from the port of London aforeſaid, directly to the ſugar colonies in the Weſt Indies, and that the ſaid William afterwards, to wit, on, &c. (being thereto

Declaration, ... gainſt the freighter, on a charter party, from London to the Weſt Indies, and the loſs of ... ſtending that ... tiff, by ... the defendant's agent, ... ſuppoſed ... carried ... ſaid ſhip ... ment, which ... landed the ... the plaintiff ... freight, ... ing to ... tonnage, ... month ... payable ... at different times.

required by the ſaid Samuel) did ſet ſail and proceed in and with the ſaid ſhip or veſſel ſo loaden as aforeſaid, from the port of London aforeſaid, directly for the colonies aforeſaid (that is to ſay, for Point Petre, in the iſland of Guadaloupe, in the Weſt Indies aforeſaid), at which place he the ſaid William did arrive in and with the ſaid ſhip or veſſel on, &c. then next following, and that on her arrival there he the ſaid William did immediately diſcharge the outward bound cargo thereof, and not being able to procure any other loading or cargo, did, by and with the order and direction, and at the ſpecial inſtance and requeſt of William Barrow, the correſpondent or agent of the ſaid freighter in that behalf, take in a complete loading or homeward bound cargo, conſiſting of French troops, ſtores, and proviſions, being ſuch a loading or cargo as the ſaid W. B. did think proper to ſhip on board thereof, to be tranſported, carried, and conveyed in the ſaid ſhip or veſſel from the iſland of Guadaloupe aforeſaid, to a certain port on the continent of Europe (that is to ſay), to port l'Orient in the kingdom of France: and afterwards, to wit, on, &c. by and with the like order and direction, and at the ſpecial inſtance and requeſt of the ſaid W. B. did ſet ſail, and proceed in and with the ſaid ſhip or veſſel ſo loaden as laſt aforeſaid, from the iſland of Guadaloupe aforeſaid, to port l'Orient aforeſaid, at which laſt-mentioned port he the ſaid William did arrive in and with the ſaid ſhip or veſſel on, &c. then next following, and there did deliver ſuch homeward bound cargo, agreeable to the direction of the ſaid W. B. there being no bills of lading thereof; and that afterwards, to wit, on, &c. he the ſaid William having delivered the ſaid homeward bound cargo, did ſet ſail and proceed in and with the ſaid ſhip or veſſel from port l'Orient to the port of London aforeſaid; and that the ſaid ſhip or veſſel did arrive at the ſaid laſt-mentioned port on, &c. then next following, and afterwards, to wit, on, &c. there received her final diſcharge, and ſo ended her ſaid voyage, to wit, at, &c.: And the ſaid William in fact further ſaith, that the money due and payable to the ſaid William for the freight and hire of the ſaid ſhip or veſſel according to the ſaid charter-party, from the firſt day, &c. next after the making of the ſaid charter party, that is to ſay, from the firſt day, &c. until the ſaid thirteenth day of, &c. being the day when the ſaid ſhip or veſſel was finally diſcharged at the port of London aforeſaid, at and after the rate of eighteen ſhillings *per* ton *per* month, and in proportion for a leſſer time than a month, amounted to a large ſum of money, to wit, the ſum of two thouſand four hundred and eighty-five pounds of lawful, &c. and which ſaid ſum of two thouſand four hundred and eighty-five pounds ought to have been paid to the ſaid William at the periods and in the manner ſet down and deſcribed in the ſaid charter-party of affreightment (that is to ſay), two months of the ſaid freight in advance in one or more good bill or bills payable within two months next after the day of the commencement of the ſaid freight; the ſecond payment thereof up to the day of the ſaid ſhip's arrival at her firſt loading port in the

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Weſt Indies, in like bill or bills of exchange in London, drawn immediately on her arrival at ſuch loading port, payable at ſixty days ſight, and the remainder of the ſaid freight in ſimilar bill or bills, payable in ſixty days next after the ſaid ſhip's final diſcharge at the port of London, together with port charges, &c. whatſoever, from the day the ſaid ſhip did break ground in the ſaid port of London aforeſaid, until her final diſcharge from the ſaid port (and which ſaid port charges, &c. amounted to a large ſum of money, to wit, the ſum of forty-ſix pounds of lawful, &c.) of all which ſaid ſeveral premiſes the ſaid Samuel, after the ſaid ſhip or veſſel was finally diſcharged, at, &c. to wit, on, &c. at, &c. had notice: And although he the ſaid Samuel did pay two months or the ſaid freight, amounting to the ſum of four hundred and ſeventy-ſeven pounds in advance, according to the tenor and effect of the ſaid charter-party of affreightment in that behalf, yet the reſidue of the ſaid freight, together with the port charges, &c. amounting to the ſum of two thouſand and fifty four pounds, or either of them, or any part thereof, have not been paid to him the ſaid William, but the ſame, and every part thereof are ſtill due and owing, and in arrear to him the ſaid William, to wit, at, &c. contrary to the form and effect, &c. (Conclude ſame as laſt precedent). G. Wood.

Plaintiff obtained a verdict for two thouſand and forty-four pounds nineteen ſhillings and ninepence three farthings.

LONDON, *ſſ.* Patrick Stafford, late of, &c. mariner, was ſummoned to anſwer Robert Haden and David Richardſon, aſſignees of the debts, goods, and effects which were of Thomas Seamark, a bankrupt, according to the form of the ſtatutes made and now in force concerning bankrupts, of a plea, that he keep with the ſaid Robert and David the covenants made between the ſaid defendant, and the ſaid T. S. and his aſſigns, according to the form and effect of a certain charter-party of affreightment made between them, &c.; and thereupon the ſaid plaintiffs by C. D. their attorney, complains, that whereas by a certain charter-party of affreightment, made before the ſaid T. S. became a bankrupt, to wit, on, &c. at, &c. between the ſaid defendant, by the name and addition of Patrick Stafford, maſter of the good ſhip or brigantine called the Sally, burthen one hundred and twenty tons or thereabouts, now in the river Thames, of the one part, and the ſaid T. S. by the name and addition of Mr. T. S. of London, merchant, of the other part (the counterpart of which ſaid charter-party, ſealed with the ſeal, &c.): It is witneſſed, &c. (ſet forth the charter-party) as by the ſaid charter-party more fully appears; and the ſaid plaintiffs further ſay, that afterwards, to wit, on, &c. he the ſaid T. S. did load the ſaid brig, in the ſaid river Thames, with a full and complete cargo of ſundry goods and merchandizes of great value, to wit, of the value of five thouſand

Declaration ... covenants ... the maſter ... the ſaid T. S. ... aſſignees of ... freighter, ... had ... become ... bankrupt, ... carrying ... tiffs goods ... Penſacola, ... cording to ... charter-party, ... but ſelling them ... at Jamaica, ... whereby plaintiff loſt ... profits, and was put to expence.

pounds, according to the form and effect of the ſaid charter-party; and the ſaid plaintiffs further ſay, that although the ſaid brig did ſail and proceed with the ſaid cargo towards Penſacola, in North America; and although the ſaid T. S. always well and truly obſerved, performed, and fulfilled and kept all and ſingular the covenants, clauſes, and agreements in the ſaid charter-party contained, on his part and behalf to be obſerved, performed, fulfilled, and kept: Yet proteſting that the ſaid defendants hath not well and truly obſerved, performed, fulfilled and kept any of the covenants, clauſes, and agreements in the ſaid charter-party contained, on his part and behalf to be obſerved, performed, fulfilled, and kept; in fact the ſaid plaintiffs ſay, that although the ſaid defendant ought to have proceeded, and was directed to proceed with the ſaid cargo in the ſaid brig, in his ſaid voyage to Penſacola, in the ſaid charter-party mentioned, according to the form and effect of the ſaid charter-party, yet the ſaid defendant wholly neglected and refuſed to proceed with the ſaid brig and cargo on the ſaid voyage to Penſacola, according to the form and effect of the ſaid charter-party, and afterwards, and before the ſaid T. S. became a bankrupt, to wit, on, &c. ſold and diſpoſed of the ſaid cargo, being of great value, to wit, of the value of five thouſand pounds, at Jamaica, in the Weſt-Indies, by means of which ſaid premiſes the ſaid T. S. hath loſt ſundry great gains and profits which would have ariſen and accrued to him from the ſaid cargo, if the ſame had been ſold at Penſacola aforeſaid; and the ſaid T. S. before he became bankrupt, by means of the premiſes was put to great expences, and was greatly injured and damnified, to wit, at, &c; and ſo the ſaid plaintiffs ſay, that the ſaid defendant hath not kept with the ſaid T. S. before he became bankrupt, or with the plaintiffs ſince he became a bankrupt, the covenants made between them the ſaid defendant, and the ſaid T. S. and his aſſigns, but hath broken the ſame, and to keep the ſame with the ſaid plaintiffs ſtill doth refuſe; damage ſix thouſand pounds, &c. &c. W. BALDWIN.

Declaration. Plaintiff was poſſeſſed of a ſhip, which he let to hire to defendant for a certain ſum of money, and defendant was to bear all expences that ſhould accrue, &c. as pilotage, port-charges, &c. and if defendant kept the ſhip over the time agreed for, he was to allow plaintiff ſo much per month; the ſhip was detained three months longer than ſhe was let for, which defendant not only refuſes to pay for, but refuſes to pay the expences that accrued for pilotage, &c.

MIDDLESEX, ff. The earl of H. was ſummoned, &c. Robert Dale, in a plea, that he keep with the ſaid Robert the covenant made by him the ſaid Earl with the ſaid Robert, according to the form and effect of certain charter-parties of affreightment thereof made between the ſaid Robert and the ſaid Earl; and thereupon the ſaid Robert, by S. T. his attorney, complains, that whereas by a certain charter-party of affreightment, indented, made, and concluded on, &c. to wit, at, &c. between the ſaid Robert, by the name and deſcription of Robert Dale, of the pariſh of, &c. owner of the good brigantine or veſſel called, &c. Britiſh built, of the burthen of one hundred and twenty tons, or thereabouts,

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then in the river Thames, of the one part, and the ſaid Earl, by the name and deſcription of the right honourable the earl of H. of the other part (one part of which ſaid laſt-mentioned charter-party, ſealed with the ſeal of the ſaid Earl, the ſaid Robert now brings into court, the date whereof is the ſame day and year aforeſaid): It was witneſſed (here copy the charter-party), as by the ſaid charter-party, relation being thereto had, may (among other things) more fully and at large appear: × And the ſaid Robert in fact ſaith, that at the time of making of the ſaid charter-party, the ſaid brigantine or veſſel was tight, ſtaunch, and ſtrong, and completely fitted, equipped, and navigated as in the ſaid charter-party is mentioned and provided for, and in that ſtate and condition was had and uſed under the ſaid charter-party, and for and during the ſpace of ſix calendar months, for which the ſame was let to the ſaid Earl as aforeſaid, and that the ſaid brigantine or veſſel did, during that time, proceed on and perform a certain voyage, that is to ſay, a certain voyage from the port of L. to the port of L. in Jamaica, and in the courſe of that voyage did touch and ſtay at divers other ports and places, purſuant and according to the directions of the ſaid Earl, the ſaid freighter of the ſaid brig or veſſel, and of the maſter by him appointed under the ſaid charter-party; and although he the ſaid Robert well and truly obſerved, performed, fulfilled, and kept all and ſingular the covenants, clauſes, and agreements in the ſaid charter-party contained, on his part and behalf to be obſerved, performed, and fulfilled, and kept, to wit, at, &c.; yet proteſting that the ſaid Earl hath not obſerved, performed, fulfilled, and kept any thing in the ſaid charter-party contained, on his part and behalf to be performed and fulfilled, the ſaid Robert in fact ſaith, that although certain port charges and pilotage aroſe and accrued to the ſaid veſſel during her aforeſaid employ under the ſaid charter-party, and during the ſaid ſpace of ſix calendar months, for which the ſaid veſſel was ſo let as aforeſaid, and in the ſaid charter-party mentioned, whereof the ſaid Earl had notice; yet the ſaid Earl did not bear, pay, or defray, nor hath he as yet borne, paid, or defrayed ſuch port charges and pilotage, or any part thereof, but omitted and neglected ſo to do, contrary to the tenor and effect of the ſaid charter-party, and of the covenant of the ſaid Earl in that behalf made as aforeſaid, whereby he the ſaid Robert was and hath been obliged to bear, pay, and defray the ſaid port charges and pilotage, amounting in the whole to a large ſum of money, to wit, the ſum of forty pounds of lawful money of Great Britain, himſelf, and out of his own proper monies, to wit, at, &c.; and the ſaid Robert in fact further ſaith, that the ſaid charter party having been ſo made and entered into as aforeſaid, certain alterations took place, and were made by him the ſaid Robert in the ſaid veſſel, in the ſaid charter-party mentioned, for accommodation, and otherwiſe at the requeſt and by the directions of the ſaid Earl, as ſuch freighter of the ſaid veſſel as aforeſaid, to wit, at, &c.; and that the charges of ſuch alterations amounted in the whole to a large ſum

of money, to wit, the ſum of thirty pounds, of like lawful money of Great Britain, whereof the ſaid Earl had notice, to wit, at, &c.; yet the ſaid Earl hath not as yet paid or defrayed the ſaid charges of the ſaid alterations, or any part thereof, but he ſo to do hath hitherto wholly refuſed, and the ſame are ſtill wholly due and owing from the ſaid Earl unto him the ſaid Robert, contrary to the tenor and effect of the ſaid charter-party, and of the covenant of the ſaid Earl in that behalf made as aforeſaid, to wit, at, &c.: and the ſaid Robert in fact further ſaith, that although the ſaid Earl thought proper to detain and keep, and did accordingly detain and keep the ſaid brig in the ſaid charter-party mentioned, for the purpoſes in the ſaid charter-party in that behalf mentioned, to wit, for the purpoſes of private accommodation, and of pleaſure, for a long ſpace of time, to wit, for the ſpace of three months longer than the ſaid ſix calendar months in the ſaid charter-party mentioned, whereby he the ſaid Earl became liable to pay to the ſaid Robert, a large ſum of money, to wit, the ſum of one hundred and ten pounds of like lawful money, being at and after the rate of one hundred pounds of like lawful money of Great Britain, and ſo proportionably for a leſſer time than a month for all ſuch time as the ſaid veſſel was ſo detained over and above the ſaid ſix calendar months as aforeſaid, whereof the ſaid Earl had notice, and was requeſted to pay ſuch money unto him the ſaid Robert, to wit, at, &c.; yet the ſaid Earl hath not as yet paid to the ſaid Robert the ſaid ſum of money ſo to him due and payable, for and in reſpect of the ſaid brig being ſo detained by the ſaid Earl for ſuch time as aforeſaid, over and above the ſaid ſix calendar months in the ſaid charter-party mentioned, or any part thereof, but he ſo to do hath hitherto wholly neglected and refuſed, and the ſaid laſt-mentioned ſum of money is ſtill due and owing from the ſaid Earl unto him the ſaid Robert, contrary to the tenor and effect of the ſaid charter-party, and of the covenant of the ſaid Earl in that behalf made as aforeſaid, to wit, at, &c.; and the ſaid Robert in fact further ſaith, that although certain other port charges and pilotage accrued during ſuch further time of employ of the ſaid brig, whereof the ſaid Earl had notice, to wit, at, &c.; yet the ſaid Earl did not pay or defray, nor hath he as yet paid or defrayed the ſaid laſt-mentioned port charges and pilotage, or any part thereof, but neglected and omitted ſo to do, contrary to the tenor and effect of the ſaid charter-party, and of the covenant of the ſaid Earl, in that behalf made as aforeſaid, whereby he the ſaid Robert was and hath been forced and obliged to pay and defray the ſaid laſt-mentioned port charges and pilotage, amounting in the whole to a large ſum of money, to wit, the ſum of forty pounds of like lawful money, himſelf, and out of his own proper monies, to wit, at, &c. &c.: And whereas by a certain other charter-party, (go on as in the firſt Count till you come to this × mark, then proceed), and the ſaid Robert avers, that at the time of the making of the ſaid laſt-mentioned charter-party of affreightment, the ſaid brigantine or veſſel therein mentioned was tight, ſtaunch, and ſtrong, and was had and

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uſed by the ſaid Earl under the ſaid laſt-mentioned charter-party, and for and during the ſaid ſpace of ſix calendar months, for which the ſame was ſo let as aforeſaid, and was during all that time completely fitted, equipped, and navigated as in the ſaid laſt-mentioned charter-party is ſtipulated and agreed upon; and although he the ſaid Robert well and truly obſerved, performed, and fulfilled all and ſingular the covenants, clauſes, and agreements in the ſaid laſt-mentioned charter-party contained, on his part and behalf to be performed and fulfilled, to wit, at, &c.; yet proteſting that the ſaid Earl did not fulfil any thing in the ſaid laſt-mentioned charter-party contained, on his part and behalf to be performed and fulfilled, the ſaid Robert in fact ſaith, that the ſaid brigantine in the ſaid laſt-mentioned charter-party, her tackle, apparel, furniture, and appurtenances were not, nor were any or either of them, or any part thereof, at or before the expiration of the ſaid ſix calendar months in the ſaid laſt mentioned charter-party ſpecified, delivered up to him the ſaid Robert, at the ſaid port of London aforeſaid, or elſewhere, in the like good order and condition the ſame was and were at the time of making the ſaid laſt-mentioned charter-party, reaſonable uſe, wear, and tear, and the damages and caſualties of the ſeas, and all unavoidable accidents excepted, or in any other order and condition, but on the contrary, the ſaid Robert in fact further ſaith, that the ſaid laſt-mentioned brigantine, and her ſaid tackle, apparel, furniture, and appurtenances were not delivered unto him the ſaid Robert until and for a long ſpace of time after the expiration of the ſaid ſix calendar months in the ſaid laſt-mentioned charter-party ſpecified, to wit, for the ſpace of ſix weeks, after the expiration of the ſaid ſix calendar months, and were during all that time kept and detained and withheld from him the ſaid Robert, by and through the neglect, omiſſion, and default of the ſaid Robert, and not by any dangers or caſualties of the ſeas, or unavoidable accident, contrary to the tenor and effect, intent and meaning of the ſaid laſt-mentioned charter-party, and of the covenant of the ſaid Earl in that behalf made as aforeſaid, to wit, at, &c. whereby he the ſaid Robert, during all the time that the ſaid laſt-mentioned brigantine or veſſel was ſo kept and detained from him, over and above the ſaid ſix calendar months for which the ſame was ſo let as aforeſaid, loſt, and was deprived of the uſe of the ſaid laſt-mentioned brigantine or veſſel, and of all profit, benefit, and advantage that would otherwiſe have ariſen and accrued to him from the ſame, to wit, at, &c.; and ſo the ſaid Robert ſaith that the ſaid Earl, although often requeſted, hath not kept his ſaid covenants ſo by him made with the ſaid Robert as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Robert hath hitherto wholly refuſed, and ſtill refuſes, to the damage of the ſaid Robert of two hundred pounds, and therefore he brings his ſuit. V. LAWES.

MIDDLESEX,

...ration in ...ant on a ...ter-party ...thereupon at ...reading port, ... for ... and pi... ...

MIDDLESEX, to wit. Henry Fletcher, late of, &c. was ſummoned to anſwer unto Thomas Freake, eſquire, of a plea, that he keep with him the covenants made between the ſaid defendant, and the ſaid plaintiff, according to the force, form, and effect of a certain charter-party of affreightment thereof made between them, &c.; and thereupon the ſaid plaintiff, by A. B. his attorney, complains, that whereas by a certain deed, called a charter-party of affreightment, indented and made on, &c. to wit, at, &c. between the ſaid plaintiff, by the name of, &c. of the one part, and the ſaid defendant, by the name, &c. &c. acting herein for and on the part and behalf of Meſſrs. Batſon, Stephenſon, and company, of London, bankers, of the other part; one part of which ſaid charter-party of affreightment, ſealed with, &c. the ſaid plaintiff brings here into court, the date whereof is the ſame day and year aforeſaid; it was witneſſed that the ſaid plaintiff, for the conſiderations therein mentioned, had granted and letten the ſaid ſhip to freight unto the ſaid defendant, who had accordingly hired and taken the ſame for the voyage upon the terms and conditions following: whereupon firſt, the ſaid owner did thereby for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid freighter, his executors, adminiſtrators, and aſſigns, that the ſaid ſhip ſhould with all convenient ſpeed, &c. &c. (the ſhip was to go to Scilly, there to be loaded with deals, &c. and was to ſtay there fifteen days, at the expiration of which time ſhe was to go to Liverpool, and ſtay there ten days in unloading her cargo, and the freighter was to pay after the rate of thirty-ſix ſhillings for every hundred of deals, and two thirds of port charges, and if they kept the ſhip over the days agreed on, they were to pay three pounds a day, &c. &c.) as by the ſaid charter-party, relation being thereunto had will more fully appear; and the ſaid plaintiff in fact ſaith, that the ſaid ſhip did with all convenient ſpeed next after the making of the ſaid charter-party of affreightment, to wit, on, &c. depart from and out of the river of Thames, and did directly, as wind and weather permitted, ſail, and proceed to St. Mary's, one of the Scilly iſlands, in the ſaid charter-party of affreightment mentioned, and afterwards, to wit, on, &c. arrived at St. Mary's aforeſaid; and being there arrived, and being tight, ſtaunch, and ſtrong, and well manned, provided and furniſhed, and fitting for the ſaid voyage in the ſaid charter-party of affreightment mentioned, and ready to load goods the ſhip did ſtay at St. Mary aforeſaid fifteen running days, and was afterwards kept there by the ſaid Meſſrs. Batſon, Stephenſon, and company, their factors or aſſigns, thirty days on demurage, over and beſides the ſaid fifteen days, in the whole amounting to forty-five days, during which time the ſaid plaintiff did load, receive, and take on board the ſaid ſhip of and from the ſaid Meſſrs. Batſon, Stephenſon, and company, their factors or aſſigns, divers, to wit, ſeventy-nine thouſand two hundred and fifteen deals, of the ſeveral dimenſions in the ſaid charter-party of affreightment mentioned, being all ſuch

deals

deals as they thought fit to load and put on board her, not exceeding what ſhe could reaſonably ſtow and carry in her, over and beſides her tackle, apparel, proviſions and furniture; and the ſaid plaintiff in fact further ſaith, that the ſaid ſhip being ſo loaden and diſpatched, did directly, as ſoon as wind and weather permitted, ſail, and proceed to Liverpool aforeſaid, or ſo near thereunto as ſhe could ſafely come, and did there unload, and deliver unto the ſaid Meſſrs. Batſon and company, their factors or aſſigns, all the ſaid goods by them loaden on board the ſaid ſhip as aforeſaid, and ſo on ſuch delivery ended her ſaid voyage, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that the freight of the ſaid deals ſo loaded, received, and taken on board the ſaid ſhip, and ſo unloaden and delivered as aforeſaid, at and after the rate of thirty-ſix ſhillings ſterling per hundred, for each and every hundred, and ſo in proportion for a leſs number than a hundred thereof, amounted to a large ſum of money, to wit, the ſum of, &c. of lawful, &c. and that two third parts of all charges and pilotage that aroſe on the ſaid ſhip, at and from London, to the time of her being unloaded as aforeſaid, amounted to another large ſum of money, to wit, the ſum of, &c. of like lawful, &c. making together with the ſaid ſum of, &c. the further ſum of, &c.; and although three months from the time of unloading of the ſaid ſhip as aforeſaid is long ſince elapſed, yet the ſaid defendant, although often requeſted, hath not as yet paid the ſaid ſum of, &c. or any part thereof to the ſaid plaintiff, but hath hitherto wholly neglected and refuſed ſo to do; and the ſame and every part thereof ſtill remains and is due and owing from the ſaid defendant to the ſaid plaintiff, contrary to the form and effect of the ſaid charter-party of affreightment, and of the covenant of the ſaid defendant, by him in that behalf made with the ſaid plaintiff in manner and form aforeſaid, to wit, at, &c.; and the ſaid plaintiff in fact further ſaith, that although the ſaid Meſſrs. Batſon, and company, their factors and aſſigns, did keep the ſaid ſhip on demurage at St. Mary's aforeſaid, thirty days over and beſides the ſaid fifteen running days, limited for her ſtay there in manner aforeſaid, yet the ſaid defendant, although often requeſted, did not, during the ſaid thirty days, pay unto the ſaid plaintiff or his aſſigns the ſum or value of three pounds ſterling *per* day, day by day, as the ſame did grow due, or any part thereof, nor hath he at any time ſince hitherto paid the ſame, or any part thereof, to ſaid plaintiff, but hath hitherto wholly refuſed and neglected ſo to do, and therein wholly failed and made default, contrary to the form and effect of the ſaid charter-party of affreightment, and of the ſaid covenant of the ſaid defendant, by him in that behalf made with the ſaid plaintiff in manner and form aforeſaid, to wit, at, &c.; and ſo the ſaid plaintiff in fact ſaith, that the ſaid defendant, although often requeſted ſo to do, &c. hath not kept his ſaid covenants ſo by him made with the ſaid plaintiff in manner and form aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid plaintiff hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to the damage of ſaid plaintiff of four hundred pounds; and therefore, &c.

And

...to the laſt declaration; 2ſt, *eſt factum*; 3d, that defendant hath paid the freight, &c.; 3d, that the defendant did not keep the ſhip on demurage ... for thirty days, but only ... twelve days, for which ... paid plaintiff.

And the ſaid Henry, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid charter-party of affreightment in the ſaid declaration mentioned, is not the deed of him the ſaid defendant; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf as to the ſaid breach of covenant in the ſaid declaration firſtly above aſſigned, the ſaid defendant, by leave, &c. according to the form of, &c. the ſaid defendant ſays *actio non*; becauſe he ſays, that the ſaid defendant hath paid to the ſaid plaintiff all ſuch monies as were become due and payable from the ſaid defendant to the ſaid plaintiff for freight and for two-third parts of port charges and pilotage, that aroſe on the ſaid ſhip at and from London to the time of her being unloaden, according to the form and effect of the ſaid charter-party of affreightment, to wit, at, &c.; and of this he puts himſelf upon the country, &c.: And for further plea in this behalf as to the ſaid breach of covenant in the ſaid declaration laſtly above aſſigned, the ſaid defendant, by leave of, &c. as to ſo much thereof as relates to the keeping of the ſaid ſhip in the ſaid declaration mentioned on demurage at St. Mary's aforeſaid for eighteen days, parcel of the ſaid thirty days in the ſaid declaration mentioned, that the ſaid plaintiff ought, &c. *actio non*; becauſe he ſays that he the ſaid defendant did not keep the ſaid ſhip on demurage at St. Mary's aforeſaid, for the ſaid eighteen days, parcel as aforeſaid, or of any of them, or any part thereof, in manner and form as the ſaid plaintiff hath above in his ſaid declaration alledged; and of this the ſaid defendant puts himſelf upon the country, &c.; and as to the keeping of the ſaid ſhip in the ſaid declaration mentioned on demurage at St. Mary's aforeſaid for twelve days, reſidue of the ſaid thirty days, in the ſaid declaration mentioned, the ſaid defendant ſays, &c. *actio non*; becauſe he ſays, that he the ſaid defendant hath paid to the ſaid plaintiff the ſum of thirty-ſix pounds, being ſo much money as became due and payable to the ſaid plaintiff for and on account of the keeping of the ſaid ſhip on demurage at St. Mary's, in the ſaid declaration mentioned for thoſe twelve days, according to the form and effect of the ſaid charter-party of affreightment, to wit, at, &c.; and of this the ſaid defendant puts himſelf upon the country, and ſo forth.

EDWARD LAW.

...in ... on a ... party ... demurage, ... commanding

LONDON, *ſſ.* J. D. late of, &c. was ſummoned to anſwer Jurgen Oſlen, of a plea of breach of covenant; for that whereas by a certain charter-party of affreightment indented, and made on, &c. to wit, at, &c. in the pariſh of, &c. between the ſaid Jurgen Oſlen (by the deſcription of J. O. maſter of the good Ruſſian ſhip Stadt Riga, of the burthen of four hundred tons meaſurement or thereabouts, and now lying at Plymouth, and bound on a voyage outward to the iſle of Teneriffe, and from thence to the iſland of St. Thomas, in the Weſt Indies), of the one part, and the ſaid James Drummond (by the name of, &c. acting herein in the names

names and undertaking for William Herries, George Keith, and Co. of Oſtend, merchants and burghers, ſubjects of his imperial majeſty, of the other part (one part of which ſaid charter-party of affreightment, ſealed, &c. &c.), it was witneſſed that the ſaid Jurgen did grant and to freight let unto the ſaid W. H. G. K. and Co. the ſaid ſhip or veſſel called, &c. for the voyage and upon the conditions thereinafter mentioned; and the ſaid Jurgen, for himſelf, his heirs, executors, and adminiſtrators, did thereby covenant, promiſe, and agree, to and with the ſaid James, his executors, adminiſtrators, and aſſigns, that the ſaid ſhip, having unloaded her outward bound cargo at the ſaid iſland of St. Thomas, and being in a fit and proper condition for the voyage thereafter deſcribed, ſhould directly ſail for and proceed to, &c. &c. &c. [the ſhip was to go to Dominica, and there take in a homeward bound cargo, and when loaded, return to Oſtend, ſhe was to ſtay at the places where ſhe loaded ninety days, and at Oſtend thirty. Copy the charter-party *verbatim*] as by the ſaid charter-party of affreightment, relation being thereunto had will more fully appear: And the ſaid Jurgen in fact ſays, that the ſaid ſhip did, after having unloaded her outward bound cargo, and as ſoon after as ſhe could be put in a fit and proper condition for the voyage in the ſaid charter-party deſcribed, proceeded to the iſland of D. in the Weſt Indies, and afterwards, to wit, on, &c. did arrive at the port of R. in the ſaid iſland of D.; and that afterwards, to wit, on, &c. he the ſaid J. O. gave notice of the arrival of the ſaid ſhip at the ſaid port of R. in the ſaid iſland of D. to one D. F. he the ſaid D. F. being an agent for the ſaid freighters in the ſaid iſland of D. and that the ſaid D. F. ſo being ſuch agent as aforeſaid, did, according to the covenant in the ſaid charter-party in that behalf, to wit, on, &c. declare that the ſaid ſhip was to load at D. aforeſaid, that is to ſay, at London aforeſaid, in the pariſh of, &c.: And the ſaid J. O. in fact further ſays, that the ſaid ſhip did lie at the ſaid port of R. in the iſland of D. aforeſaid, for the ſpace of ninety running days, and alſo for ten days and upwards after the expiration of the ſaid ninety running days next after the arrival of the ſaid ſhip at D. aforeſaid, to wit, until and upon the nineteenth day of, &c. to receive a cargo, and that the ſaid J. O. was during all that time ready and willing, and the ſaid D. F. the agent of the freighters, well knew that the ſaid J. O. was during all that time ready and willing to load, take, and receive on board the ſaid ſhip from the ſaid freighters or their aſſigns a full and complete homeward bound cargo of ſugar, cotton, &c. &c. as the ſaid ſhip could reaſonably ſtow and carry in her; and that the ſaid J. O. was during all that time ready and willing with the ſaid ſhip, her boats and crew, to give proper and cuſtomary aſſiſtance in the loading of the ſaid ſhip, to wit, at, &c.: But the ſaid J. O. in fact further ſays, that the ſaid freighters did not, neither did the ſaid D. F. as agent to the ſaid freighters, or any other agent, correſpondent, or aſſigns of the ſaid freighters, within the ſaid ninety running days, or days of demurage, in the ſaid charter-

party

party mentioned; at the ſaid port of R. in the ſaid iſland of D. load or ſend along-ſide of the ſaid ſhip a full and complete homeward bound cargo of ſugar, &c. &c. as in the ſaid charter-party mentioned, or any cargo whatſoever, but neglected and refuſed ſo to do, contrary to the covenant of the ſaid James in the ſaid charter-party mentioned, that is to ſay, at, &c.: And the ſaid J. O. in fact further ſays, that although the ſaid D. F. as agent to the freighters aforeſaid, kept the ſaid ſhip at the port of R. in the iſland of D. aforeſaid, on demurage, for the ſpace of ten days after the expiration of the ſaid ninety running days, as in the ſaid charter-party mentioned. Yet neither the freighters' agents, correſpondents, or aſſigns, have yet paid to him the ſaid J. O. the ſum of ſixty pounds, according to the time in the ſaid charter-party mentioned, or any part thereof, but that the ſaid ſum of ſixty pounds for demurage as aforeſaid, ſtill remains due and unpaid to him the ſaid J. O. contrary to the covenant of him the ſaid J. O. in that behalf made as aforeſaid, to wit, at, &c.; and ſo the ſaid J. O. ſays, that he the ſaid James hath not kept with him the covenant ſo made between them as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid J. O. the ſaid James hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid J. O. of ten thouſand pounds; and therefore he brings ſuit, &c.

Plea to the laſt declaration; 1ſt, *non eſt factum*; 2d, that the ſhip did not unload her outward bound cargo according to the form of the charter-party; 3d, that the ſhip did not, after ſhe was ſo unloaded, proceed with all convenient ſpeed to the loading port; 4th, that the plaintiff did not give notice of the arrival, of the ſhip to the defendant; 5th, that the ſhip unload-

And the ſaid James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays leave to imparle to the ſaid declaration, and it is granted to him, &c.; and thereupon a day is given to the parties aforeſaid to come before our lord the king in eight days of St. Hilary, whenſoever our ſaid lord the king ſhall then be in England, at which day, before our lord the king at Weſtminſter, comes the parties aforeſaid, by their attornies aforeſaid, and the ſaid James defends the wrong and injury, when, &c. and ſays, that the ſaid charter-party of affreightment in the ſaid declaration mentioned, is not his deed; and of this the ſaid J. puts himſelf upon the country, &c.: And the ſaid James, for further plea in this behalf, by leave, &c. according, &c. ſays *actio non*; becauſe he ſays that the ſaid ſhip, in the ſaid charter-party mentioned, did not unload her outward bound cargo at the ſaid iſland of T. before ſhe proceeded to the iſland of D. according to the form and effect of the ſaid charter-party; and this, &c.; wherefore, &c. if, &c.: And the ſaid James, for further plea in this behalf, by like leave, &c. ſays, that the ſaid Jurgen *actio non*; becauſe he ſays that the ſaid ſhip did not, after having unloaded her outward bound cargo, and as ſoon after as ſhe could be put in

cargo at a different port, and was detained by the order of the plaintiff, whereby the defendant was prevented from getting a full cargo; 6th, that the ſhip did not with all convenient ſpeed ſail from the ſaid port to the port of A. B. and that after ſhe ſailed ſhe arrived at the port of D. where the plaintiff detained her a much longer time than was neceſſary for the putting her in proper condition for completing her voyage; and that after ſhe was ſo completed ſhe ſailed to another port than mentioned in the charter-party, whereby the defendants were prevented from procuring any homeward cargo; 7th, that the defendant's agent did not keep the ſhip on demurage.

a fit

a fit and proper condition for her voyage in the ſaid charter-party deſcribed, proceed to the ſaid iſland of D. in manner and form as the ſaid Jurgen hath in his ſaid declaration in that behalf above alledged; and of this the ſaid James puts, &c.: And the ſaid James, for further plea in this behalf, by leave, &c. ſays, *actio non*; becauſe, proteſting that the ſaid Jurgen did not give notice of the arrival of the ſaid ſhip at the ſaid port of R. in the ſaid iſland to the ſaid D. F. in manner and form as the ſaid J. O. hath in his ſaid declaration above alledged in that behalf, proteſting alſo that the ſaid D. F. was not an agent to the ſaid freighters at the ſaid iſland of D. in manner and form as the ſaid J. O. hath in his ſaid declaration above alledged; for plea nevertheleſs in this behalf, the ſaid J. D. ſays, that the ſaid David Frager did not as agent to the ſaid freighters there declare that the ſaid ſhip was to load at Dominica aforeſaid, in manner and form as the ſaid J. O. hath in his ſaid declaration in that behalf above alledged; and of this he the ſaid James Drummond puts himſelf upon the country: And for further plea in this behalf, by leave, &c. ſays, that the ſaid J. O. *actio non*; becauſe he ſays that the ſaid ſhip did not unload her outward bound cargo at the ſaid iſland of St. Thomas, according to the covenant of the ſaid J. O. in that behalf made in the ſaid charter-party, but that on the contrary thereof the ſaid ſhip, by the orders of the ſaid J. O. ſailed to and unloaded her outward bound cargo at the iſland of St. Lucia, in the Weſt Indies, and that J. O. wilfully, and without any reaſonable and probable cauſe, kept and detained the ſaid ſhip at the iſland of St. Lucia, for the ſpace of five months and upwards after her arrival there, and for much longer time than was neceſſary for the purpoſe of unloading her outward bound cargo, and putting the ſaid ſhip in a fit and proper condition for her voyage for Dominica, as deſcribed in the charter-party, before he proceeded with the ſaid ſhip to the ſaid iſland of Dominica, by reaſon of which ſaid unneceſſary delay of the ſaid ſhip, at the ſaid iſland of St. Lucia, and for no other cauſe whatſoever, the ſaid freighters, their agents, correſpondents, and aſſigns were wholly diſabled, and prevented from proceeding or loading, or ſending along-ſide the ſaid ſhip any homeward bound cargo of ſugars, coffee, cotton, or other produce, according to the ſaid charter-party, and this, &c.; wherefore, &c. if, &c.: And the ſaid J. D. for further plea in this behalf, by leave, &c. ſays, that the ſaid Jurgen *actio non*; becauſe he ſays that the ſaid ſhip in the ſaid charter-party mentioned, to wit, on the ſaid twelfth day of April, in the year of Our Lord 1782, was lying and being in the port of Plymouth, in the county of Devon; and that the ſaid ſhip, being in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the ſaid outward voyage in the ſaid charter-party mentioned, did not ſet ſail and depart from the port of Plymouth aforeſaid, within a reaſonable time from the time of the making the ſaid charter-party, but on the contrary thereof the ſaid Jurgen wilfully and without any reaſonable or probable cauſe, kept and detained

the

the ſaid ſhip at Plymouth from the time of the making of the ſaid charter-party, until and upon the ninth day of May then next enſuing: And the ſaid J. D. further ſays, that the ſaid ſhip, being ſo as aforeſaid in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the ſaid voyage, afterwards, to wit, on the ſaid ninth day of May, in the year of Our Lord 1782, departed and ſet ſail from the port of Plymouth aforeſaid upon her ſaid voyage in the ſaid charter-party mentioned, and afterwards, to wit, on the fifteenth day of June, in the year of Our Lord 1782, arrived at the ſaid iſland of Teneriffe: And the ſaid J. D. further ſays, that the ſaid ſhip, after her arrival at the iſland of Teneriffe, being in all things fully and completely trimmed, rigged, fitted out, victualled, and manned for the completion of the ſaid outward voyage in the ſaid charter-party mentioned, did not ſet ſail and depart from the ſaid iſland of T. aforeſaid within a reaſonable time, from the time of the arrival of the ſaid ſhip at the iſland of T. aforeſaid; but on the contrary thereof the ſaid J. wilfully, and without any reaſonable or probable cauſe, kept, and detained the ſaid ſhip at the ſaid iſland of T. from the time of the arrival of the ſaid ſhip at the ſaid iſland of T. until and upon the tenth day of, &c. then next enſuing: And the ſaid J. D. further ſays, that the ſaid ſhip, ſo being in all things fully and completely trimmed, &c. for the ſaid voyage, afterwards, to wit, on, &c. departed and ſet ſail from the ſaid iſland of T. for and towards the iſland of St. Lucia, in the Weſt Indies, and afterwards, to wit, on, &c. arrived at the ſaid iſland of St. L. in the Weſt Indies, and there unloaded her outward bound cargo, and did not arrive at or unload her outward bound cargo at the ſaid iſland of St. Thomas, in the ſaid charter-party mentioned: And the ſaid J. D. further ſays, that the ſaid J. O. wilfully, and without any reaſonable or probable cauſe whatſoever, kept and detained the ſaid ſhip at the iſland of St. L. aforeſaid, for the ſpace of five months and upwards, that is to ſay, until and upon the ſeventeenth day of, &c. after her arrival there, and for a much longer time than was neceſſary for the purpoſe of unloading her outward bound cargo, and putting the ſaid ſhip in a fit and proper condition for ſailing for and towards the iſlands of D. or St. L. or any or either of them, in the ſaid charter-party mentioned, before he ſet ſail and proceeded with the ſaid ſhip to the ſaid iſland of D. as in the ſaid declaration mentioned; by reaſon of all which wilful and unneceſſary delays and detentions of the ſaid ſhip by the ſaid J. O. and for no other cauſe whatſoever, the ſaid freighters or their agents, correſpondents, and aſſigns at either or any of the ſaid iſlands of, &c. were wholly diſabled and prevented from procuring, or loading, or ſending alongſide of the ſaid ſhip any homeward bound cargo of ſugar, &c. according to the ſaid charter-party; and this, &c.; wherefore, &c. if, &c.: And the ſaid J. D. for further plea in this behalf as to the ſecond breach of covenant above aſſigned, by leave, &c. ſays, *actio non*; becauſe he ſays that the ſaid D. F. did not, as agent to the ſaid freighters, keep the ſaid ſhip at port R. in the ſaid iſland of

of D. on demurage for the ſpace of ten days, or any part thereof, after the expiration of the ſaid ninety running days, in manner and form as the ſaid J. O. hath above in his ſaid declaration in that behalf alledged; and of this he the ſaid J. D. puts himſelf upon the country, &c. GEORGE WOOD.

And the ſaid Jurgen prays a day to imparl to the ſaid plea, and it is granted to him, &c.; and thereupon a day is given to the parties aforeſaid to come before our lord the king in fifteen days from the day of Eaſter, whereſoever our ſaid lord the king ſhall then be in England, &c. that is to ſay, for the ſaid Jurgen to imparl to the ſaid plea, and then to reply to the ſame, &c. at which day, before our lord the king at Weſtminſter, come the parties aforeſaid, by their attornies aforeſaid; and the ſaid Jurgen prays a further day to imparl to the ſaid plea, and it is granted him, &c.; and thereupon a further day is given to the parties aforeſaid to come before our lord the king on the morrow of the Holy Trinity, whereſoever our ſaid lord the king ſhall then be in England, that is to ſay for the ſaid Jurgen to imparl to the ſaid plea, and then to reply to the ſame, &c.; at which day, before our lord the king at Weſtminſter, come the parties aforeſaid by their attornies aforeſaid, and the ſaid Jurgen prays a further day to imparl to the ſaid plea, and it is granted to him, &c.; and thereupon a further day is given to the parties aforeſaid to come before our lord the king on the morrow of All Souls, whereſoever our ſaid lord the king ſhall then be in England, that is to ſay, for the ſaid Jurgen to imparl to the ſaid plea, and then to reply to the ſame, &c.; at which day, before our lord the king at Weſtminſter, come the parties aforeſaid, by their attornies aforeſaid, and the ſaid Jurgen prays a further day to imparl to the ſaid plea, and it is granted him, &c.; and thereupon a further day is given to the parties aforeſaid to come before our lord the king in eight days of St. Hilary, whereſoever our ſaid lord the king ſhall then be in England, that is to ſay, for the ſaid Jurgen to imparl to the ſaid plea, and then to reply to the ſame, &c.; at which day, before our lord the king at Weſtminſter, come the parties aforeſaid, by their attornies aforeſaid, and the ſaid Jurgen prays a further day to imparl to the ſaid plea, and it is granted to him, &c.; and thereupon a further day is given to the parties aforeſaid, to come before our lord the king in fifteen days from the day of Eaſter, &c.; [and ſo continued to the morrow of the Holy Trinity as before] at which day, before our lord the king at Weſtminſter, come the parties aforeſaid, by their attornies aforeſaid, and the ſaid Jurgen, as to the ſaid plea of the ſaid James by him firſt above pleaded in bar, and whereof the ſaid James hath put himſelf upon the country, doth the like, &c.: And the ſaid Jurgen, as to the ſaid plea of the ſaid James by him ſecondly above pleaded in bar, ſays, that he by reaſon of any thing in that plea contained, ought not to be barred

Replication that the unload

port mentioned in the charter-party; 2d, that plaintiff did not keep the ſhip at her unloading longer time than was neceſſary; 3d, that the defendants were not prevented, from ſuch ſuppo lays of plaintiff's from procuring a cargo.

from having and maintaining his aforeſaid action thereof againſt him the ſaid James; becauſe he ſays that true it is that the ſaid ſhip in the ſaid charter-party mentioned did not unload her outward bound cargo at the ſaid iſland of St. Thomas, as the ſaid James has in that plea alledged, but for replication in this behalf the ſaid Jurgen ſays, that before and at the time of the making of the ſaid charter-party in the ſaid declaration mentioned, and afterwards, it was intended by the ſaid Jurgen that the ſaid ſhip ſhould unload her ſaid outward bound cargo at the ſaid iſland of St. Lucia in the ſaid declaration mentioned, if ſhe ſhould be able to go into the ſame, and not at the ſaid iſland of St. Thomas, unleſs the ſaid ſhip ſhould by any accident be prevented from going into the ſaid iſland of St. Lucia, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid James, before and at the time of the making of the ſaid charter-party, to wit, on the twelfth day of April, A. D. 1782, at London aforeſaid, in the pariſh and ward aforeſaid, had notice: And the ſaid Jurgen in fact further ſays, that the ſaid ſhip, not being prevented by any accident from going into the ſaid iſland of St. L. did afterwards, to wit, on, &c. there arrive, and afterwards, to wit, on, &c. did there unload her ſaid outward bound cargo, to wit, at the ſaid iſland of St. L. before ſhe proceeded to the ſaid iſland of D. to wit, at London aforeſaid, in the pariſh, &c.; and this, &c.; wherefore, &c. and his damages, on occaſion of the ſaid breaches of covenant in the ſaid declaration above aſſigned to be adjudged to him, &c.: And the ſaid J. as to the ſaid plea of the ſaid James by him thirdly above pleaded in bar, and whereof the ſaid James hath above put himſelf upon the country, does ſo likewiſe: And the ſaid J. O. as to the ſaid plea of the ſaid James by him fourthly above pleaded in bar, whereof the ſaid James hath above put himſelf upon the country, he the ſaid J. O. doth ſo likewiſe, &c.: And the ſaid J. O. as to the ſaid plea of the ſaid James by him fifthly above pleaded in bar, ſays, *precludi non*; becauſe, proteſting that the ſaid plea and the matters therein contained, are not ſufficient in law to bar him the ſaid J. O. from having and maintaining his ſaid action thereof againſt the ſaid James, to which ſaid plea in manner and form as the ſame is above made, the ſaid J. O. is under no neceſſity, nor is he bound by the law of the land to anſwer; for replication, nevertheleſs, in this behalf, the ſaid J. O. ſays, that he did not wilfully keep and detain the ſaid ſhip at the ſaid iſland of St. L. after her arrival there for much longer time than was neceſſary for the purpoſe of unloading her outward bound cargo, and putting the ſaid ſhip in a fit and proper condition for her voyage for Dominica, as deſcribed in the ſaid charter-party, before he proceeded with the ſaid ſhip to the iſland of D. in manner and form as the ſaid James hath in that plea above alledged; and this he the ſaid J. O. prays may be enquired of by the country, &c.: And the ſaid J. O. as to the ſaid plea of the ſaid James by him ſixthly above pleaded in bar, ſays, *precludi non*; becauſe, proteſting as to the ſufficiency of it; for replication, nevertheleſs, in this behalf the ſaid J. O. ſays, that the ſaid freighters, or their

agents, correſpondents, or aſſigns, at either or any of the ſaid iſlands of D. &c. &c. were not, by reaſon of any ſuch ſuppoſed wilful and unneceſſary delays and detentions of the ſaid ſhip in the ſaid plea mentioned, and for no other cauſe whatſoever, wholly diſabled and prevented from procuring, or loading, or ſending alongſide of the ſaid ſhip, any homeward bound cargo of ſugar, &c. according to the charter-party, in ſaid manner and form as the ſaid James hath in his ſaid plea by him ſixthly above pleaded in bar in that behalf alledged; and this the ſaid J. O. prays, &c. And the ſaid J. O. as to the ſaid plea of the ſaid James by him ſeventhly above pleaded in bar, and whereof the ſaid James hath put himſelf upon the country, does ſo likewiſe, &c.

EDWARD LAW.

Demurrer. And the ſaid James, as to the ſaid plea of the ſaid J. O. by him above pleaded by way of reply to the ſaid plea of the ſaid James, by him ſecondly above pleaded in bar, ſays, that the ſaid replication and the matters therein contained are inſufficient in law for the ſaid J. O. to have his aforeſaid action thereof maintained againſt him the ſaid James, to which ſaid replication, in manner and form aforeſaid made and pleaded, he the ſaid James hath no need, nor is he bound by the law of the land to anſwer in that reſpect; and this, &c. and prove as the court here ſhall direct; wherefore, for want of a ſufficient replication in this behalf the ſaid James prays judgment, and that the ſaid J. O. may be barred from having and maintaining his aforeſaid action thereof againſt him the ſaid James: And as to the ſaid plea of the ſaid J. O. by him pleaded by way of reply to the ſaid plea of the ſaid James by him pleaded in bar, and whereof the ſaid J. O. hath above prayed it may be enquired of by the country, he the ſaid James doth ſo likewiſe: And as to the ſaid plea of the ſaid J. O. by him above pleaded by way of reply to the ſaid plea of the ſaid James by him ſixthly above pleaded in bar, and whereof the ſaid J. O. hath above prayed may be enquired, &c. &c.

GEORGE WOOD.

Joinder. And the ſaid J. O. for that he hath in his ſaid plea by him above pleaded by way of reply to the ſaid plea of the ſaid James by him ſecondly above pleaded in bar, alledged ſufficient matter in law for him the ſaid J. O. to have and maintain his aforeſaid action againſt him the ſaid James, which he the ſaid J. O. is ready to verify and prove as the court, &c. and which ſaid matter the ſaid James hath not denied, nor in any wiſe anſwered thereto, but wholly refuſes to admit the verification thereof, the ſaid J. O. as before prays judgment and his damages, on occaſion of the ſaid breaches of covenant in the ſaid declaration above aſſigned to be adjudged to him, &c.

EDWARD LAW.

Plaintiff obtained a verdict for 3,350l.

By the East India Company on a charter party.

LONDON, to wit. The united company of merchants of England, trading to the East Indies, complain of F. G. of L. mariner, being, &c. of a plea of covenant broken: for that whereas, by a certain charter indented of affreightment made the twenty-firſt of October 1736, at L. aforeſaid, in the pariſh, &c. between R. N. eſquire, and S. W. merchant, by the names of, &c. part owners of the good ſhip called the Suſſex, of London, which the ſaid part owners affirmed to be of the burthen of four hundred and ninety tons or upwards, then riding at anchor in the river of Thames; and the ſaid F. G. by the name of, &c. of the other part (one part of which ſaid charter-party, indented and ſealed with the ſeals of the ſaid R. S. and F. the ſaid united company brings here into court, the date whereof is the ſame day and year): It is witneſſed that the ſaid part owners, for themſelves and the reſt of the owners of the ſaid ſhip, and the ſaid maſter, for himſelf, his executors, and adminiſtrators, granted and let to freight all the ſaid ſhip unto the ſaid united company, and the ſaid united company hired and took to freight all the ſaid ſhip for a voyage to be made by God's bleſſing as hereafter mentioned in trade, and alſo in warfare, as the ſaid company, or any of their governors, preſidents, or agents, authorized thereunto by the Court of Directors for the time being of the ſaid company, or any other committee thereof ſhould require or direct; whereupon the ſaid part owners, for themſelves jointly and ſeverally, and for the reſt of the part owners of the ſaid ſhip, and for their reſpective heirs, executors, and adminiſtrators, did, in and by the ſaid charter-party indented, in conſideration of the ſum of one thouſand two hundred and twenty-five pounds, of, &c. by the ſaid united company, to be impreſt or paid to them at the ſhip's arrival at Graveſend outwards, in part of the freight and demurage, to grow due in reſpect of the ſaid intended voyage, and of the further ſum of three thouſand ſix hundred and fifteen pounds, to be there likewiſe paid by the ſaid company to the ſaid maſter, in full ſatisfaction of and for all primage, average, which might otherwiſe become due and payable to the ſaid mariners, or for or on account of the ſaid ſhip's intended voyage, and for and in conſideration of the conceſſions and covenants thereinafter, on the part and behalf of the ſaid company contained, and every of them covenant, grant, and agree, to and with the ſaid united company of merchants trading to the Eaſt Indies, their ſucceſſors and aſſigns, by the ſaid charter-party intended, that the ſaid mariners and maſter for the time being, together with the ſhips' officers and ſhip's company, ſhould, in and during the ſaid intended voyage with the ſaid ſhip at ſea, and with the ſaid ſhip, her ſkilt and boat in port, together with ſuch part of the ſaid ſhip's company as ſhould be neceſſary, not exceeding at any one time thirty men, unto, from, and upon the land, in as defenſive and offenſive manner in trade, and alſo in warfare, if ſo required, as aforeſaid, and otherwiſe, at all times as occaſion ſhould require, be ready to ſerve, and ſhould accordingly,

jngly, honeſtly, faithfully, and manfully ſerve the ſaid company, their factors, and aſſigns; and the ſaid part owner and maſter did as aforeſaid jointly and ſeverally covenant and agree, to and with the ſaid united company, that the ſaid maſter and the *mariners* of the ſaid ſhip for the time being, during the whole intended voyage, ſhould obſerve ſuch commands, orders, directions, and inſtructions, as ſhould from time to time be given by the ſaid united company, or their court of directors for the time being, or by a committee to be appointed by them or by their governors, preſidents, agents, chief factors, or aſſigns; and it was by the ſaid charter-party indented further agreed, that the ſaid ſhip, after her departure from the Downs, ſhould (wind and weather permitting, and the reſtraint in the ſaid charter-party excepted) directly ſail to ſuch ports and places in the Eaſt Indies, or other the limits of the ſaid company, or elſewhere, as the ſaid company or their court of directors for the time being, or a committee appointed by the ſaid court for that purpoſe, or the major part of them, ſhould direct in writing, and ſhould there, according to ſuch directions, fully, duly, and ſafely diſcharge and deliver in manner accuſtomed all ſuch bullion, goods, merchandizes, and paſſengers, as ſhould be loaden or put on board the ſaid ſhip, and ſhould alſo receive and take on board the ſaid ſhip, and well and ſecurely ſtow and place therein all ſuch other goods, bullion, merchandizes, and paſſengers, as ſhould be loaden or put on board, or tendered to be loaden or put on board for or on account of the ſaid united company, or by their order, or by the order of any of their preſidents, agents, chief, and councils, or others their ſervants, and afterwards ſhould ſail therewith directly to ſuch other ports, rivers, and places, to which the ſaid ſhip ſhould be appointed by the ſaid united company, preſidents, factors, or agents, and ſhould, at all or any of thoſe other ports or place whereunto ſhe ſhould be ſo ordered, not only duly and in ſafety diſcharge and deliver in manner accuſtomed, all ſuch bullion, goods, merchandizes, and paſſengers, as the ſaid united company, their preſidents, factors, or agents, ſhould lade or put on board, or tender to be laden or put on board her for England or elſewhere, leaving ſo much room as that therein ſhe might over and above the ſame reaſonably ſtow and carry her victuals, naval and other ſtores, tackles, and apparel, and to the performance of all and ſingular the covenants, grants, articles, payments, and agreements therein written, and in the indorſements which as well on the part and behalf of the ſaid part owners and maſters, their executors and adminiſtrators reſpectively, well and truly to be holden, paid, kept, and performed in all things as therein the ſaid part owners and maſters did bind themſelves jointly and ſeverally their joint and ſeveral heirs, executors, and adminiſtrators, and the ſhip aforeſaid, with the freight, tackle, boats, and apparel of the ſame, unto the ſaid united company and their ſucceſſors and aſſigns; nevertheleſs and provided, that the ſaid company ſhould not have, exact, or receive from the ſaid part owners by or from all or any of the penalties in

the ſaid charter-party mentioned, any ſum or ſums of money exceeding the value of the ſaid ſhip and approven her freight, demurrage, and earnings, and the maſter's private trade; and the ſaid united company did alſo bind themſelves, and their ſucceſſors and aſſigns, to the ſaid part owners and maſter, their executors and adminiſtrators, as by the ſaid charter-party indented it doth and may appear: And the ſaid united company in fact ſay, that the ſaid ſhip, at the ſaid time of making the ſaid charter-party aforeſaid, was ſtrong and ſtaunch, and well and ſufficiently fitted with boats, maſts, ſails, yards, cables, ropes, cords, artillery, and other furniture and apparel, and full neceſſary for ſuch a ſhip and for ſuch a voyage, according to the form and effect of the charter-party aforeſaid: And the ſaid united company further ſay, that before the ſaid F. G. ſet out on the ſaid intended voyage, the court of directors of the ſaid united company did direct in writing the ſaid F. G. to ſet ſail and proceed, as wind and weather would permit, to the port of Canton in China, whereto he the ſaid H. G. was conſigned, and on his arrival there to deliver to Meſſrs. &c. whom the ſaid Court of Directors had appointed to be ſupercargoes for managing the affairs of the ſaid united company in China, or to ſuch of them as ſhould be there preſent, all the treaſure, goods, and effects on board the ſaid ſhip, conſigned to them by invoice and bill of lading, and the ſaid F. G. was to receive all ſuch goods in return of the ſaid cargo of the ſaid united company, as they ſhould order on board, and ſign bills of lading for the ſame, and the ſaid F. G. was to follow all other the orders agreeable to the ſaid charter-party, and when the ſaid F. G. was diſpatched by the ſaid ſupercargoes, he was to make the beſt of his way in return to England, according to the inſtructions which the ſaid ſupercargoes ſhould give him: And the ſaid united company further ſay, that the ſaid F. G. before he ſet out on his ſaid intended voyage, was ordered and inſtructed in writing by the ſaid Court of Directors of the ſaid united company, then in caſe he ſhould fall in company with any of the outward-bound ſhipping of the ſaid united company, that he ſhould not ſeparate on any pretence whatſoever, but keep company ſo far as their way lay together, except a plain unavoidable neceſſity, or if homeward bound he ſhould ſeparate with any ſhip that ſhould be diſpatched with him, or that he ſhould fall in company with, until he ſhould get to the weſtward of the Cape of Good Hope, or if in caſe of any aſſault by an enemy outward or homeward, he ſhould not ſtand by, and to the utmoſt aſſiſt one another in defence of themſelves, and of the company's eſtate on board ſuch concerting ſhips, the ſaid Court of Directors of the ſaid united company ſhould deem them unworthy and incapable of ſerving the company any longer; and the ſaid Court of Directors of the ſaid united company in the ſaid inſtructions took notice that they put the ſame clauſe into all their captains' inſtructions: And the ſaid united company further ſay, that the ſaid F. G. did, in purſuance of the ſaid charter-party of freightment in the ſaid ſhip Suſſex, ſet

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ſail for, and afterwards did arrive at Canton in China, that is to ſay, on the thirty-firſt of July 1737: And the ſaid united company further ſay, that the ſaid J. E. on fifteenth of November in 1737, departed this life at Canton aforeſaid, and that the ſaid R. A. &c. the ſurviving ſupercargoes and agents of the ſaid united company afterwards, that is to ſay, on the fourth of January 1737, did diſpatch the ſaid F. G. and the ſaid ſhip, and then and there gave him inſtructions in writing to proceed with the ſaid ſhip the Suſſex to the ſaid united company's iſland of St. Helena, and from thence to the port of London, taking for the ſecurity of both ſhips to keep company with the Wincheſter (a ſhip then belonging to the ſaid united company): and the ſaid united company, proteſting that they have performed all things contained in the ſaid charter-party on their part to be performed, and that the ſaid F. G. hath not performed any thing in the ſaid charter-party on his part to be performed, do aver, that the ſaid F. G. after he was diſpatched and had received his inſtructions laſt-mentioned, that is to ſay, on the fourth of January 1737, did depart with the ſaid ſhip from Canton aforeſaid: Yet the ſaid F. G. did not faithfully, honeſtly, and manfully ſerve the ſaid united company, nor did proceed with the ſaid ſhip Suſſex to the ſaid iſland of St. Helena, according to the true intent and meaning of the ſaid charter-party, and the inſtructions given him by the ſaid R. A. &c. ſupercargoes and agents of the ſaid united company as aforeſaid: but the ſaid united company further ſay, that the ſaid F. G. after his departure with the ſaid ſhip Suſſex from Canton aforeſaid, and before his arrival at the iſland of St. Helena, that is to ſay, on the eleventh of March 1737, did diſhoneſtly, unfaithfully, and unmanfully, and without any neceſſity, and without any good or ſufficient cauſe, voluntarily leave and deſert the ſaid ſhip; whereby, and by reaſon whereof, all the goods and effects on board the ſaid ſhip of and belonging to the ſaid united company, of the value of fifty thouſand pounds, were entirely loſt, and became of no uſe to the ſaid united company, contrary to the form and effect of the ſaid charter-party, and of the covenant of the ſaid F. G. therein contained; and ſo the ſaid F. G. hath broken his covenant aforeſaid, to the damage of the ſaid united company of fifty thouſand pounds; and therefore, &c.

AND the ſaid F. G. by A. B. his attorney, comes, &c. and ſaith, that the ſaid united company, *actio non*, becauſe, as to the ſaid breach of covenant aſſigned in this, that the ſaid F. G. did not honeſtly, faithfully, and manfully ſerve the ſaid company, he the ſaid F. G. ſays, that the ſaid united company ought not to have their ſaid action thereof againſt him, becauſe he ſaith, that the ſaid F. G. always, from the time of making of the ſaid charter-party during all the time the ſaid F. G. continued in the ſervice of the ſaid united company, according to the true intent and meaning of the ſaid charter-party, and of his covenant aforeſaid, that is to ſay, at L. aforeſaid; and of this, &c.: And as to the Plea, ſhip ed

ſaid breach of covenant above aſſigned, in not proceeding with the ſaid ſhip Suſſex to the iſland of St. Helena in the ſaid declaration mentioned, he the ſaid F. G. ſays, that after his arrival with the ſaid ſhip Suſſex at Canton aforeſaid mentioned in the ſaid declaration, and as ſoon as he was diſpatched from them by the ſurviving ſupercargoes and agents as above-mentioned, to wit, fourth January 1737, did with all convenient ſpeed depart and ſail with the ſaid ſhip Suſſex from Canton aforeſaid in the ſaid voyage, and proceed with the ſame ſhip in the ſaid voyage towards the iſland of St. Helena, according to the inſtructions and directions of the ſaid ſurviving ſupercargoes and agents in that behalf given to him as aforeſaid in the ſaid declaration mentioned; But the ſaid F. G. further ſaith, that the ſaid ſhip Suſſex, in her ſaid voyage from Canton aforeſaid towards St. Helena aforeſaid, and after her departure from Canton aforeſaid, and before her arrival at St. Helena aforeſaid, to wit, on the eleventh of March 1737, upon the high ſeas, by force and violence of the wind and tempeſt, was wrecked and loſt in the ſea; by reaſon whereof the ſaid F. G. could not proceed with the ſaid ſhip Suſſex to St. Helena aforeſaid, according to the inſtructions and directions of the ſaid ſurviving ſurpercargoes and agents in that behalf given to him as aforeſaid; and the ſaid F. G. is ready, &c.; wherefore, &c.: And as to the ſaid breach of covenant above aſſigned in this, that the ſaid F. G. did diſhoneſtly, unfaithfully, unmanfully, and without any neceſſity, and without any good or ſufficient cauſe, voluntarily leave and deſert the ſaid ſhip Suſſex after his departure with the ſame ſhip from Canton aforeſaid, and before his arrival at St. Helena aforeſaid, the ſaid F. G. ſays, that he did not diſhoneſtly, unfaithfully, and unmanfully, and without any neceſſity, and without any good cauſe, voluntarily leave and deſert the ſaid ſhip Suſſex, after his departure with the ſame ſhip from Canton aforeſaid, and before his arrival at the iſland of St. Helena aforeſaid, contrary to the form and effect of the ſaid covenant in this behalf made; and of this, &c.: And for further plea as to the ſaid breach of covenant above aſſigned in this, that the ſaid F. G. did, after his departure with the ſaid ſhip Suſſex from Canton aforeſaid, and before his arrival at the iſland of St. Helena aforeſaid, diſhoneſtly, unfaithfully, and unmanfully, and without any neceſſity, and without any good and ſufficient cauſe, voluntarily leave and deſert the ſaid ſhip Suſſex, he the ſaid F. G. by leave of the court, &c. further ſaith, that he the ſaid F. G. after the arrival of the ſaid ſhip Suſſex at Canton aforeſaid, and as ſoon as he was diſpatched from them by the ſaid ſurviving ſupercargoes and agents above-mentioned, to wit, fourth January 1737, did with all convenient ſpeed depart and ſet ſail with the ſaid ſhip Suſſex from Canton aforeſaid in the ſaid voyage, and proceeded with the ſaid ſhip Suſſex in the ſaid voyage towards the iſland of St. Helena aforeſaid, according to the inſtructions and directions of the ſaid ſurviving ſupercargoes and agents in that behalf given as above-mentioned: But the ſaid F. G. further

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ſaith, that the ſaid ſhip Suſſex, in her ſaid voyage from Canton aforeſaid towards St. Helena aforeſaid, to wit, upon the eleventh March 1737, upon the high ſea, by force and violence of the wind and tempeſt, was entirely diſabled from proceeding on her ſaid voyage to St. Helena aforeſaid, and was then in imminent danger of being loſt in the ſea, and by means of the ſaid tempeſt ſoon after ſunk and was loſt in the ſea; by reaſon whereof the ſaid F. G. was then and there neceſſarily and unavoidably, for the neceſſary preſervation of his own life and the lives of many ſailors and mariners, and of R. A. &c. two ſupercargoes of the ſaid company then on board the ſaid ſhip Suſſex, forced and obliged with them to leave and deſert the ſaid ſhip, ſo being diſabled and in imminent danger of being ſunk and loſt in the ſea as aforeſaid, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid; and this, &c.; wherefore, &c.

Replication to the diſabled deſerted the ſhip.

And the ſaid united company, as to the ſaid plea of the ſaid F. G. as to the ſaid breach of covenant above aſſigned, in not proceeding with the ſaid ſhip Suſſex to the iſland of St. Helena, as in the ſaid declaration by the ſaid F. G. above pleaded, ſay, that true it is that the ſaid Ship Suſſex, after her departure from Canton aforeſaid, and before her arrival at St. Helena aforeſaid, was loſt upon the high ſeas: but the ſaid united company further ſay, that long before the ſaid time when the ſaid ſhip was loſt, to wit, on the fifteenth of February 1737, he the ſaid F. G. did diſhoneſtly, unfaithfully, and unmanfully, and without any neceſſity, and without any good or ſufficient cauſe, voluntarily leave and deſert the ſame ſhip, in manner and form as the ſaid united company have declared againſt; wherefore they pray judgment and their damages, by reaſon of the premiſes to be adjudged to them, &c. And the ſaid united company, as to the ſaid ſecond plea of the ſaid F. G. as to the ſaid breach of covenant above aſſigned in this, that the ſaid F. G. did, after his departure with the ſaid ſhip Suſſex from Canton aforeſaid, and before his arrival at St. Helena, diſhoneſtly, unfaithfully, and unmanfully, and without any good and ſufficient cauſe, voluntarily leave and deſert the ſaid ſhip Suſſex, by him above pleaded in bar, ſay, that the ſaid F. G. without the cauſe by him in his ſaid ſhip Suſſex from Canton aforeſaid, and before his arrival at St. Helena aforeſaid, to wit, on the eleventh of March 1737, did diſhoneſtly, unfaithfully, and unmanfully leave and deſert the ſame ſhip in manner and form as the ſaid united company have declared againſt him; and this they pray, &c.

Rejoinder and iſſue.

And the ſaid F. G. as to the ſaid plea of the ſaid united company, in reply to the ſaid breach of covenant, in not proceeding with the ſaid ſhip Suſſex to the iſland of St. Helena aforeſaid, ſaith, that he the ſaid F. G. did not diſhoneſtly, unfaithfully, and unmanfully, and without any neceſſity, and without any good and ſufficient cauſe, voluntarily leave and deſert from the ſaid ſhip in

in manner and form as the said united company have above in pleading alledged; and of this, &c.: And hereupon the said united company say, that William Smith and R. Wilmot, esquires, are sheriffs of London, and the said William Smith, one of the said sheriffs, in his own right, is proprietor and hath interest in and to a share and proportion of the principal stock of the said united company, of the value of one thousand pounds, and is a member of the said united company; and this the said united company are ready to verify: and for this cause the said united company pray a writ to be directed to the said R. W. esquire, the other sheriff of London, to cause to come here twelve, &c. to try, &c. joined between the parties, and because the said F. G. doth not deny the aforesaid allegation of the united company, but acknowledges the same, it is granted to them; and therefore let a jury come, &c. Verdict for plaintiffs for twenty-five thousand pounds.

Suggestion that one of the sheriffs hath interest, and pray the writ of *venire* to be directed to the other sheriff.

(a) COVENANT ON POLICIES OF ASSURANCE ON SHIPS AND GOODS.

Hilary Term, in the twentieth year of the reign king George the Second.

LONDON, to wit. The London Assurance were summoned to answer George Moore of a plea, that they keep with him the covenant made between them the said London Assurance, and Fureland Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald and Co. for and on account of the said George Moore, according to the force, form, and effect of a certain deed made by the said London Assurance to the said Fuller and Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald, and Co. for and on account of the said George Moore; and thereupon the said George Moore, by Daniel Sill his attorney, complains, that whereas, by a certain deed poll, commonly called a policy of assurance, made by the said London Assurance, and by them sealed with their common seal on the fourth day of December in the year of Our Lord 1772, at London aforesaid, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap (which said deed, sealed with the common seal of the said London Assurance, he the said G. M. brings here into court, the date whereof is the same day and year aforesaid), they the said Fuller and Mourgue, and Robert Evance Fitzgerald, by the name of Mourgue, Fitzgerald, and Co. as well in their own name as for and in the name and names, &c.: *(b)* And the said George Moore doth aver, that the said ship mentioned in the said deed before the time of making the said deed, to wit, on the twenty-fourth

Declaration against the London Assurance, on a policy of assurance of goods, &c. ship run aground on the coast of Scotland within the port of London.

Profert out the policy.

(a) Actions on policies on ships, &c. are now more frequently *assumpsit* than covenant. (See *Assumpsit*, Vol. I.)

day

day of November in the ſaid year of Our Lord 1772, was in good ſafety, to wit, at the coaſt of Valentia aforeſaid mentioned in the ſaid deed, and was then and there loaded with divers goods and merchandizes, and that the ſaid goods and merchandizes ſo laden on board the ſaid ſhip as aforeſaid, were of very large value, to wit, of the value of all the money ever inſured thereon: And the ſaid George Moore further ſaith, that at the time of the making of the ſaid deed, and from thenceforth and until and at the time of the loſs and misfortune hereafter mentioned, he was intereſted in the ſaid goods and merchandizes to a large value, to wit, of all the money ever inſured thereon, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid George Moore further ſaith, that the ſaid ſhip, with the ſaid goods and merchandizes ſo laden and being on board her as aforeſaid, afterwards, to wit, on the ſaid twenty-fourth day of November in the ſaid year of Our Lord 1772, departed and ſet ſail from the coaſt of Valentia aforeſaid on her ſaid voyage towards and for London aforeſaid, and afterwards and before the ſaid goods and merchandizes ſo laden and being on board the ſaid ſhip as aforeſaid could be ſafely diſcharged and landed at London aforeſaid in the ſaid deed mentioned, to wit, on the ſeventeenth day of January in the year of Our Lord 1773, the ſaid ſhip ſtruck upon the ground in the river Thames, in the port of London aforeſaid; by means whereof the ſaid ſhip became and was filled with water, and thereby the ſaid goods and merchandizes afterwards, to wit, on the ſame day and year laſt aforeſaid, and before they could be ſafely diſcharged and landed at London aforeſaid, became and were, by means of the misfortune aforeſaid, and of the ſaid water of the ſaid river Thames coming into the ſaid ſhip and filling the ſame as aforeſaid, wholly damaged, ſpoiled, and deſtroyed, and of no uſe or value to the ſaid George Moore; whereof the ſaid London Aſſurance afterwards, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice, and were then and there liable and requeſted by the ſaid George Moore to pay him the ſaid ſum of two thouſand four hundred pounds ſo by him aſſured in form aforeſaid, according to the form and effect of the ſaid deed, and of their covenant in that behalf ſo made by them as aforeſaid: Yet the ſaid George Moore in fact ſaith, that the ſaid London Aſſurance have not paid to the ſaid George Moore the ſaid ſum of two thouſand four hundred pounds, nor any part thereof, contrary to the form and effect of the ſaid deed, and of their ſaid covenant ſo made by them in that behalf as aforeſaid: And ſo the ſaid George Moore ſaith, that the ſaid London Aſſurance (although often thereto requeſted), have not kept with and performed to him their aforeſaid covenant in manner aforeſaid made, but have broken the ſame, and to perform the ſame have altogether refuſed, and ſtill do refuſe, to the damage of the ſaid George Moore of three thouſand pounds; and therefore he brings this ſuit, &c. G. Wood.

And

Plea, non infregit, &c.

And the ſaid London Aſſurance, by William Brown their attorney, come and defend the wrong and injury, when, &c. and ſay, that they have not broke their covenant with the ſaid Fareland Morgue and Robert Evance Fitzgerald (by the name of Morgue, Fitzgerald, and Company), for and on account of the ſaid George Moore, in manner and form as he the ſaid George Moore hath above thereof complained againſt them; and of this the ſaid London Aſſurance put themſelves upon the country, &c. and the ſaid George Moore doth the like: therefore it is commanded to the ſheriffs that they cauſe to come before our lord the king, whereſoever our ſaid lord the king ſhall then be in England, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the ſame parties, &c.

On a policy of aſſurance, ſhip was taken by enemies.

LONDON, to wit. The London Aſſurance were ſummoned to anſwer Robert Butler and Peter Mauger, of a plea that they keep with them the covenant between them, made according to the form and effect of a certain deed made by the ſaid London Aſſurance to the ſaid Robert Butler and Peter Mauger, &c.: And thereupon the ſaid Robert Butler and Peter Mauger ſay, that whereas, by a certain deed, commonly called a policy of aſſurance made by the ſaid London Aſſurance, and by them ſealed with their common ſeal, on the nineteenth day of May in the year of Our Lord 1758, at London aforeſaid, to wit, in the pariſh of St. Mary-le-Bow in the ward of Cheap (which ſaid deed, ſealed with the common ſeal of the ſaid London Aſſurance, they the ſaid Robert Butler and Peter Mauger now bring here into court, bearing date the ſame day and year aforeſaid), they the ſaid Robert Butler and Peter Mauger, by the names of Butler and Mauger, for George Wombell, ſenior and junior, as well in their own names as for and in the name and names, &c.: (a) And the ſaid Robert Butler and Peter Mauger further ſay, that the ſaid ſhip called the St Antonio de Padua in the ſaid deed mentioned, before and at the time of the making of the ſaid deed, and from thence continually afterwards until and at the time of the capture and loſs of the ſaid ſhip hereafter mentioned, was a Spaniſh ſhip, and that the ſaid ſhip, after the making of the ſaid deed, to wit, on the eleventh day of September in the ſaid year of Our Lord 1758, ſo being a Spaniſh ſhip, was in ſafety at Majorca in the ſaid deed mentioned; and being ſo in ſafety, and a Spaniſh ſhip, to wit, on the ſame day and year laſt aforeſaid, divers goods and merchandizes, that is to ſay, one hundred and ſixty pipes of oil, of a great value, to wit, of the value of two thouſand pounds, were loaded on board the ſaid ſhip or veſſel at Majorca aforeſaid, to be carried there in the ſaid voyage from Majorca aforeſaid to Poole in the ſaid deed mentioned; and the ſaid goods and merchandizes remained and continued on board the ſaid ſhip from thence until and at the time of the loſs of the ſame hereinafter mentioned; and that the ſaid George Wombwell the elder and George Womb-

(a) Set out the policy.

the

well the younger, and one William Barfoot, at the time of the loading of the ſaid goods and merchandizes on board the ſaid ſhip as aforeſaid, and from thence continually until and at the time of the loſs of the ſaid goods and merchandizes hereinafter mentioned, were intereſted in the ſaid goods and merchandizes to a large value, to wit, to the value of one thouſand eight hundred pounds, and that the ſaid aſſurance ſo made by the ſaid Robert Butler and Peter Mauger as aforeſaid, was ſo made by them for and on the account of, and in truſt for the ſaid George Wombwell the younger and William Barfoot, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Robert Butler and Peter Mauger further ſay, that the ſaid ſhip, with the ſaid goods and merchandizes ſo loaden and being on board her as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, departed and ſet ſail on her ſaid voyage from Majorca aforeſaid towards and for Poole aforeſaid, but the ſaid goods and merchandizes, or any part thereof, never did arrive at Poole aforeſaid, but on the contrary thereof the ſaid ſhip or veſſel, with the ſaid goods and merchandizes ſo loaden and being on board her as aforeſaid, ſailing and proceeding on her ſaid voyage, after her ſaid departure from Majorca aforeſaid, and before her arrival at Poole aforeſaid, to wit, on the ſame eleventh day of September in the ſaid year of Our Lord 1758 aforeſaid, on the high ſeas, with force and arms was attacked, ſeized, taken, and carried away by certain ſubjects of the ſaid lord George the Second, late king of Great Britain, &c.; and the ſaid goods and merchandizes then being and remaining on board the ſaid ſhip, were thereby then and there taken and carried away, and thereby wholly loſt to the proprietors thereof; of all which ſaid premiſes the ſaid London Aſſurance afterwards, to wit, on the fifteenth day of December in the year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice, and were then and there required by the ſaid R. B. and P. M. to pay to them one thouſand ſix hundred and ſixty-ſix pounds of the ſaid one thouſand ſeven hundred pounds ſo as aforeſaid aſſured, deducting thirty-four pounds, reſidue of the ſaid one thouſand ſeven hundred pounds, in reſpect of the loſs aforeſaid, which ſaid one thouſand ſix hundred and ſixty-ſix pounds the ſaid London Aſſurance then and there ought to have paid to the ſaid Robert Butler and Peter Mauger, on occaſion of the premiſes aforeſaid, according to the tenor and effect of the ſaid deed: yet the ſaid London Aſſurance did not then, nor have they at any other time whatſoever paid the ſaid one thouſand ſix hundred and ſixty-ſix pounds, or any part thereof, to the ſaid R. B. and P. M. or either of them, but have hitherto altogether refuſed, and ſtill do refuſe to pay the ſame, and have made default therein, againſt the form and effect of the ſaid deed, and their covenant made in that behalf as aforeſaid. And whereas by a certain other deed, &c.: And the ſaid Robert Butler and Peter Mauger further ſay, that the ſaid ſhip called St.

2d Count, the policy made in

for G. W. and W. B. that the aſſureds did labour, &c. but defendant did not contribute

Antonio

Antonio de Padua in the ſaid deed mentioned, before and at the time of the making of the ſaid deed, and from thence continually afterwards until and at the time of the capture and loſs of the ſaid ſhip hereinafter mentioned, was a Spaniſh ſhip, and that the ſaid ſhip, after the making of the ſaid laſt-mentioned deed, to wit, on the eleventh day of September in the ſaid year of Our Lord 1758, ſo being a Spaniſh ſhip, was in ſafety at Majorca in the ſaid laſt-mentioned deed mentioned, and being ſo in ſafety and a Spaniſh ſhip, to wit, on the ſame day and year laſt aforeſaid, divers goods and merchandizes, to wit, one hundred and ſixty pipes of oil, of great value, to wit, of the value of two thouſand pounds, were loaden on board the ſaid ſhip at Majorca aforeſaid, to be carried therein the ſaid voyage from Majorca aforeſaid to Poole in the ſaid laſt-mentioned deed mentioned, and the ſaid goods and merchandizes remained and continued on board the ſaid laſt-mentioned ſhip from thence until and at the time of the loſs or misfortune hereinafter mentioned, and that the ſaid George Wombwell the elder and George Wombwell the younger, and William Barfoot, at the time of the loading of the ſaid laſt-mentioned goods and merchandizes on board the ſaid laſt-mentioned ſhip as aforeſaid, and from thence continually until and at the time of the loſs or misfortune hereafter next mentioned, were intereſted in the ſaid laſt-mentioned goods and merchandizes to a large amount, to wit, to the value of one thouſand eight hundred pounds, and that the ſaid aſſurance ſo made by the ſaid Robert Butler and Peter Mauger as laſt aforeſaid, was ſo made by them for and on the account of, and in truſt for the ſaid George Wombwell the elder and George Wombwell the younger, and William Barfoot, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid: and the ſaid R. R. and P. M. further ſay, that the ſaid laſt-mentioned ſhip, with the ſaid goods and merchandizes ſo loaden and being on board her as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, departed and ſet ſail on her ſaid laſt-mentioned voyage from Majorca aforeſaid towards and for Poole aforeſaid, and that the ſaid laſt-mentioned ſhip or veſſel, with the ſaid laſt-mentioned goods and merchandizes ſo loaden and being on board her as aforeſaid, ſailing and proceeding on her ſaid voyage after her ſaid departure from Majorca aforeſaid, and before her arrival at Poole aforeſaid, to wit, on the ſaid eleventh day of September in the year aforeſaid, on the high ſeas, with force and arms was attacked, ſeized, taken, and carried away by certain ſubjects of the ſaid lord George the Second, late king of Great Britain, &c.; and the ſaid laſt-mentioned goods and merchandizes then being on board the ſaid laſt-mentioned ſhip, were thereby then and there taken and carried away: And the ſaid Robert Butler and Peter Mauger, further in fact ſaith, that the ſaid aſſured, their factors, ſervants, and aſſigns, did thereupon afterwards ſue, labour, and travel, for, in, and about the recovery of the ſaid laſt-mentioned goods and merchandizes, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and that the charges thereof amounted to a large

a large ſum of money, to wit, eight hundred pounds, and that the ſaid governor and company, according to the rate and quantity of the ſhip in the ſaid laſt-mentioned deed aſſured, became liable, and ought to have contributed a large ſum of money, to wit, five hundred pounds, to the ſaid charges, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid governor and company afterwards, to wit, on the firſt day of January in the year of Our Lord 1761, had notice, and were then and there required by the ſaid R. B. and P. M. to contribute the ſaid ſum of five hundred pounds to the charges aforeſaid; nevertheleſs the ſaid governor and company did not then, nor have they at any time whatſoever contributed the ſaid ſum of five hundred pounds, or any part thereof, to the aforeſaid charges, but have hitherto altogether refuſed, and ſtill do refuſe to contribute the ſame, and have made default therein, contrary to the form and effect of the ſaid laſt-mentioned deed, and of their ſaid covenant made in that behalf as aforeſaid. And whereas, &c. the ſaid R. B. and P. M. further ſay, that the ſaid ſhip called the ſaid St. Antonio de Padua, in the ſaid laſt-mentioned deed mentioned, before and at the time of the making of ſaid deed, and from thence continually afterwards, until and at the time of the capture and loſs of the ſaid ſhip hereinafter mentioned, was a Spaniſh ſhip, and that the ſaid ſhip after the making of the ſaid laſt-mentioned deed, to wit, on the ſaid eleventh day of September 1758, ſo being a Spaniſh ſhip, was in ſafety at Majorca, in the ſaid laſt-mentioned deed mentioned, and being ſo in ſafety, and a Spaniſh ſhip, to wit, on the ſame day and year laſt aforeſaid, divers goods and merchandizes, that is ſay, one hundred and ſixty pipes of oil, of great value, to wit, of the value of two thouſand pounds, were loaden on board the ſaid laſt-mentioned ſhip or veſſel, at Majorca aforeſaid, to be carried there in the ſaid voyage from Majorca aforeſaid, to Poole, in the ſaid laſt-mentioned deed mentioned; and the ſaid laſt-mentioned goods and merchandizes remained and continued on board the ſaid laſt-mentioned ſhip from thence until and at the time of the loſs of the ſame hereinafter mentioned, and that the ſaid George Wombwell the elder, and George Wombwell the younger, at the time of the loading of the ſaid laſt-mentioned goods and merchandizes on board the ſaid ſhip as laſt aforeſaid, and from thence continually until and at the time of the loſs of the ſaid goods and merchandizes hereinafter mentioned, were intereſted in the ſaid goods and merchandizes to a large value, to wit, to the value of one thouſand eight hundred pounds; and that the ſaid aſſurance ſo made by the ſaid R. B. and P. M. as laſt aforeſaid, was ſo made by them for and on account of and in truſt for the ſaid G. W. the elder, and G. W. the younger, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid, and the ſaid R. B. and P. M. further ſay, that the ſaid ſhip with the ſaid laſt-mentioned goods and merchandizes ſo loaded and being on board her as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, departed and ſet ſail on her ſaid voyage from Majorca aforeſaid, towards and for Poole aforeſaid, but the ſaid

3d Count. [illegible] not pay [illegible] loſs, [illegible] ſmall deduct[illegible]

ſaid laſt-mentioned goods and merchandizes, or any part thereof, never did arrive at Poole aforeſaid, but on the contrary thereof, the ſaid ſhip or veſſel, with the ſaid laſt-mentioned goods and merchandizes ſo laden and being on board her as aforeſaid, ſailing and proceeding on her ſaid voyage after her departure from Majorca aforeſaid, and before her arrival at Poole aforeſaid, to wit, on the ſaid eleventh day of September, in the year laſt aforeſaid, on the high ſeas, with force and arms was attacked, ſeized, taken, and carried away by certain ſubjects of the ſaid lord George the ſecond, late king of Great Britain, &c.; and the ſaid laſt-mentioned goods and merchandizes then being and remaining on board the ſaid ſhip, were thereby then and there taken and carried away, and thereby wholly loſt to the proprietors thereof; of all which ſaid laſt-mentioned premiſes the ſaid London Aſſurance afterwards, to wit, on the ſaid fifteenth day of December, in the year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice, and were then and there required by the ſaid Robert Butler and Peter Mauger to pay to them one thouſand ſix hundred and ſixty-ſix pounds, parcel of the ſaid one thouſand ſeven hundred pounds ſo as laſt aforeſaid aſſured, deducting thirty-four pounds, reſidue of the ſaid one thouſand ſeven hundred pounds, in reſpect of the loſs aforeſaid, which ſaid laſt-mentioned one thouſand ſix hundred and ſixty-ſix pounds the ſaid London Aſſurance then and there ought to have paid to the ſaid Robert Butler and Peter Mauger, on occaſion of the premiſes laſt aforeſaid, according to the tenor and effect of the ſaid laſt-mentioned deed; yet the ſaid London Aſſurance did not then, nor have they at any other time whatſoever, paid the ſaid laſt-mentioned one thouſand ſix hundred and ſixty-ſix pounds, or any part thereof, to the ſaid Robert Butler and Peter Mauger, or either of them, but have hitherto altogether refuſed, and ſtill do refuſe to pay the ſame, and have made default therein againſt the form and effect of the ſaid laſt-mentioned deed, and their covenant made in

4th Count. that behalf as aforeſaid: And whereas, &c. and the ſaid R. B. and P. M. further ſay, that the ſaid ſhip called the St. Antonio de Padua, in the ſaid deed mentioned, before and at the time of the making of the ſaid deed, and from thence continually afterwards, until and at the time of the capture and loſs of the ſaid ſhip hereinafter mentioned, was a Spaniſh ſhip; and that the ſaid ſhip, after the making of the ſaid laſt-mentioned deed, to wit, on the eleventh day of September, in the ſaid year of Our Lord 1758, ſo being a Spaniſh ſhip, was in ſafety at Majorca, in the ſaid laſt-mentioned deed mentioned, and being ſo in ſafety, and a Spaniſh ſhip, to wit, on the ſame day and year laſt aforeſaid, divers goods and merchandizes, to wit, one hundred and ſixty pipes of oil, of great value, to wit, of the value of two thouſand pounds, were loaden on board the ſaid ſhip at Majorca aforeſaid, to be carried therein the ſaid voyage from Majorca aforeſaid to Poole, in the ſaid laſt-mentioned deed mentioned, and the ſaid goods and merchandizes remained and continued on board the ſaid laſt-mentioned ſhip from thence until and at the time of the loſs or misfortune hereinafter

after mentioned; and that the ſaid G. W. the elder, and G. W. the younger, at the time of the loading of the ſaid laſt-mentioned goods and merchandizes on board the ſaid laſt-mentioned ſhip as aforeſaid, and from thence continually until and at the time of the loſs or misfortune hereinafter next mentioned, were intereſted in the ſaid laſt-mentioned goods and merchandizes to a large value, to wit, to the value of one thouſand eight hundred pounds, and that the ſaid aſſurance ſo made by the ſaid R. B. and P. M. as laſt aforeſaid, was ſo made by them for and on the account of and in truſt for the ſaid G. W. the elder, and G. W. the younger; that is to ſay, at London aforeſaid, in the parith and ward aforeſaid; and the ſaid R. B. and P. M. further ſay, that the ſaid laſt-mentioned ſhip, with the ſaid goods and merchandizes ſo loaden and being on board her as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid, departed and ſet ſail on her ſaid laſt-mentioned voyage from Majorca aforeſaid, towards and for Pool aforeſaid, and that the ſaid laſt-mentioned ſhip or veſſel, with the ſaid laſt-mentioned goods and merchandizes ſo loaden, and being on board her as aforeſaid, ſailing and proceeding on her ſaid voyage, after her ſaid departure from Majorca, and before her arrival at Pool aforeſaid, to wit, on the ſaid eleventh day of September, in the year aforeſaid, on the high ſeas with force and arms was attacked, ſeized, taken and carried away by certain ſubjects of the ſaid lord George the Second, late king of Great Britain, &c. and the ſaid laſt-mentioned goods and merchandizes then being on board the ſaid laſt-mentioned ſhip, were thereby then and there taken and carried away, and the ſaid R. B. and P. M. further in fact ſay, that the ſaid aſſured, their factors, ſervants, and aſſigns, did thereupon afterwards ſue, labour, and travel for in and about the recovery of the ſaid laſt-mentioned goods and merchandizes, to wit, at London aforeſaid, in the parith and ward aforeſaid; and that the charges thereof amounted to a large ſum of money, to wit, eight hundred pounds, and the ſaid Governor and Company according to rate and quantity of the ſum in the ſaid laſt-mentioned deed aſſured, became liable and ought to have contributed a large ſum, to wit, five hundred pounds with all charges, that is to ſay, at London aforeſaid, in the parith and ward aforeſaid, whereof the ſaid Governor and Company afterwards, to wit, on the firſt day of January, in the year of Our Lord 1701, there had notice, and were then and there requeſted by the ſaid R. B. and P. M. to contribute the ſaid ſum of five hundred pounds to the charges aforeſaid: nevertheleſs the ſaid Governor and Company did not then, nor have they at any other time whatſoever contributed the ſaid ſum of five hundred pounds, or any part thereof, to the aforeſaid charges; but have hitherto altogether refuſed, and ſtill do refuſe to contribute the ſame, and have made default therein, contrary to the form and effect of the ſaid laſt-mentioned deed, and of their ſaid covenant made in that behalf as aforeſaid, and ſo the ſaid R. B. and P. M. ſay, that the ſaid Governor and Company, although often requeſted, have not kept their ſaid covenant ſo made with them, although often requeſted, but have

Averment that charges of labour, &c. amounted to 800l. and that defendants refuſed to contribute.

broken the ſame, and to keep the ſame with the ſaid R. B. and P. M. have hitherto wholly refuſed, and ſtill do refuſe, to the ſaid R. B. and P. M. their damage of two thouſand two hundred pounds; and therefore they bring ſuit, &c.

Plea, *inſufficiency.*

And the ſaid (London Aſſurance,) by Philip Roberts their attorney, come and defend the wrong and injury, when, &c.; and ſay, that they have not broke their covenants in the aforeſaid policies of aſſurance contained, or any of them, in manner and form as the ſaid R. B. and P. M. above complain againſt them, and of this they put themſelves upon the country, and the ſaid R. B and P. M. do the like; therefore the ſheriff is commanded that he cauſe to come before our lord the king, from the day of the Holy Trinity in three weeks, whereſoever he ſhall then be, in England, &c. by whom, &c. and who within, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the parties aforeſaid there, &c.

ON POLICIES AGAINST FIRE.

Declaration on a policy of inſurance from 500*l.* by me.

MIDDLESEX, *ff.* J. D. complains againſt T. W. J. W. and J. A. being, &c. of a plea of covenant broken, for that whereas by a certain deed poll, commonly called a policy of inſurance, made by the ſaid defendants, and ſealed with their ſeals, on, A. D. at , in the ſaid county of M. which ſaid deed, ſealed, &c.: it is witneſſed, &c. as by the ſaid policy of inſurance it more fully appears, which ſaid policy of inſurance the ſaid J. D. then and there accepted, and the ſaid J. D. further ſaith, that by the ſaid deed of ſettlement it was and is provided, that the directors of the ſaid contributionſhip for the time being, or three of them, ſhould execute all policies, and that all the lawful orders and acts of the directors and truſtees of the ſaid contribution ſhould bind every member thereof, and that the ſaid directors ſhould be indemnified in the execution of their truſts by the ſaid contributionſhip, and ſuch indemnity ſhould be firſt made good out of the effects of the ſaid contributionſhip: And the ſaid J. D. further ſaith, that after the making of the aforeſaid deed, now brought here into court, and before the expiration of ſeven years from the date thereof, the ſaid policy being in full force, to wit, on the ſixth of June 1780, the ſaid brick houſe, &c. in the ſaid policy of inſurance mentioned, being of great value, to wit, of the value of three thouſand three hundred pounds, were burnt down and demoliſhed by fire, to wit, at the pariſh aforeſaid; and that notice of ſuch damage by fire forthwith afterwards, to wit, on the ſaid ſixth of June, in the year laſt aforeſaid, at the pariſh aforeſaid, was given by the ſaid J. D. to the then directors of the ſaid contribution, and their proper officers and agents in that behalf, according to the form and effect of the ſaid policy of inſurance, and that the directors of the ſaid contributionſhip, for the

Plaintiff accepted the policy.

Proviſions in the deed of ſettlement of the Inſurance office for indemnifying the directors.

Vide Mr. Wood's opinion, *infra.*

time being, their officers, agents, workmen, and aſſigns, did not, at the charge of the ſaid contributionſhip, begin to rebuild or repair the ſaid brick houſe, &c. within ſixty days next after the brick houſe, &c. were ſo as aforeſaid burnt down and demoliſhed by fire, nor have the ſaid directors of the ſaid contributionſhip for the time being, their officers, agents, workmen, or aſſigns, procured the ſaid brick houſe, &c. within a reaſonable time after the burning down and demoliſhing thereof by fire as aforeſaid, to be rebuilt or repaired, and put into as good condition, as the ſame were before ſuch fire happened as aforeſaid, except gilding, painting, &c.: And the ſaid J. D. further ſaith, that the monies, ſecurities, and effects of the ſaid contributionſhip, at the end of ſixty days next after the ſaid brick houſe, &c. were ſo as aforeſaid burnt down and demoliſhed by fire, and continually from thence, hitherto were of much greater value than three thouſand three hundred pounds, to wit, of the value of fifty thouſand pounds, yet the truſtees or treaſurers, for the time being, of the ſaid contributionſhip, have not raiſed, paid, and ſatisfied by and out of the monies, ſecurities, and effects of the ſaid contributionſhip, unto the ſaid J. D. the ſaid ſum of three thouſand three hundred pounds, at the end of ſixty days next after the ſaid brick houſe and offices were ſo as aforeſaid burnt down and demoliſhed by fire, or at any time ſince as they ought to have done, according to the form and effect of the ſaid policy of inſurance; and ſo the ſaid J. D. ſaith, that defendants, although often requeſted, have not kept the ſaid covenant ſo made with the ſaid J. D. as aforeſaid, but have broken the ſame, and to keep the ſame with the ſaid J. D. defendants have hitherto altogether refuſed, and ſtill do refuſe, to the damage of ſaid J. D. of five thouſand pounds; and therefore, &c.

I doubt whether the words of the policy amount to a covenant to bind the defendants perſonally to pay the loſs, however, in order to aſſiſt ſuch a conſtruction, I think it may be proper to inſert in the declaration (as I have done), the proviſion in the ſettlement for the indemnity of the directors, from which, I think, an inference arises that the policies were perſonally to bind them, otherwiſe there could be no reaſon for indemnity. G WOOD.

OUR lord the ſent to his truſty and well-loved ſir James Eyre, knight, his chief juſtice of the bench here, his writ, cloſed in theſe words: George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and ſo forth; to our truſty and well-beloved ſir James Eyre, knight, our chief juſtice of the bench, greeting: Foraſmuch as in the record and proceſs, as alſo in giving of judgment in a plaint which was in our court before you, and your aſſociates, our juſtices of the bench, by our writ between Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees of the eſtate and effects of Joſeph Thomas Lockyer and James Wilder Bream, being bankrupts, and Thomas Worſley, gentleman, of a plea of covenant broken, as it is ſaid manifeſt error hath intervened, to the great damage of the ſaid Thomas Worſley, as by his complaint we are informed, we willing that the ſaid error (if any be) Proceedings in error Writ.

be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, then you ſend to us diſtinctly and plainly, under your ſeal, the record and proceſs of the ſaid plaint, with all things touching the ſame, and this writ, ſo that we may have them in eight days of St. Hilary, whereſoever we ſhall then be in England, that inſpecting the record and proceſs aforeſaid, we may cauſe further to be done thereupon for amending the ſaid error as of right, and according to the law and cuſtom of England ſhall be meet to be done. Witneſs ourſelf at Weſtminſter, the third day of December, in the thirty-ſixth year of our reign. HINGESTON.

Return. The anſwer of ſir James Eyre, knight, chief juſtice, within named.

The record and proceſs of the plaint within mentioned, with all things touching the ſame, I ſend before our lord the king, whereſoever, &c. at the day within contained in a certain record to this writ annexed, as I am within commanded. JAMES EYRE.

Pleas inrolled at Weſtminſter, before the right honourable ſir James Eyre, knight, and his brethren juſtices of his majeſty's court of common bench, of Trinity Term, in the thirty-fourth year of the reign of our ſovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and ſo forth.—Roll 964—5—6—7—8.

Declaration by aſſignees of a bankrupt in covenant on a policy of inſurance againſt fire, on dwelling-houſe, &c. in trade, &c.

London, to wit. Thomas Worſley, late of London, gentleman, was ſummoned to anſwer Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees of the eſtate and effects of Joſeph Thomas Lockyer and James Wilder Bream, being bankrupts, according to the form and effect of the ſtatutes made and provided concerning bankrupts, of a plea of breach of covenant, whereupon the ſaid Jacob Charles and Charles John, by Alexander Anneſley, their attorney, complain, for that whereas by a certain deed poll, commonly called a policy of inſurance, made before the ſaid Joſeph Thomas and James Wilder became bankrupts, to wit, on the ninth day of March, in the year of Lord 1792, at London aforeſaid, in the pariſh of St. Mary-le-bow, in the ward of Cheap, and ſealed with the ſeal of the ſaid Thomas, but which ſaid deed poll or policy of inſurance hath been ſince burnt by fire, or otherwiſe deſtroyed, and therefore cannot be produced here in court by the ſaid Jacob Charles and Charles John: It is witneſſed that the ſaid Joſeph Thomas and James Wilder, therein called Meſſrs. Joſeph Thomas Lockyer and James Wilder Bream, No. 33, Taviſtock-ſtreet, linen-drapers, had paid the ſum of eleven pounds ſixteen ſhillings to the Phœnix Aſſurance Company, of London, and having agreed to pay, or cauſe to be paid to them at their office in Lombard-ſtreet, the ſum of ten pounds eleven ſhillings on the twenty-fifth day of March 1793, and the like ſum yearly on the day aforeſaid, during the continuance of the

the ſaid policy for inſurance from loſs or damage by fire, not exceeding in each caſe the ſum or ſums therein after recited upon the property therein deſcribed, in the place or places therein ſet forth, and not elſewhere, unleſs allowed by indorſement previouſly made, as ſet forth in the margin, *videlicet*, on their intereſt in the leaſe of their then dwelling-houſe, only brick, ſituate as aforeſaid, not exceeding two hundred and ſeventy pounds; houſhold goods therein, three hundred and fifty pounds; printed books therein, forty pounds; ſtock and utenſils therein, ſix thouſand pounds; wearing apparel therein, two hundred pounds; plate therein, fifty pounds; china, glaſs, and looking-glaſs plates therein, fifty pounds; liquors therein, twenty pounds; mathematical and muſical inſtruments therein, twenty pounds; and it is by the ſaid deed or policy declared, that the intent of the inſurance in the aforeſaid leaſe was to cover to the ſaid Meſſrs. Joſeph Thomas and James Wilder the value of their improvements in the aforeſaid buildings, and by the ſaid deed or policy the ſaid Thomas Worſley did covenant with the ſaid Joſeph Thomas and James Wilder, that from the ſeventh day of February, in the year of Our Lord 1792, and ſo long as the ſaid aſſureds ſhould duly pay, or cauſe to be paid the premium aforeſaid, at the times aforeſaid, and the truſtees or directors of the ſaid company for the time being ſhould agree to accept the ſame, *the capital ſtock and funds of the ſaid company ſhould be ſubject and liable to pay* to the ſaid aſſureds, his, her, or their heirs, executors, and adminiſtrators, all ſuch damage and loſs which the ſaid aſſureds ſhould ſuffer by fire on the property therein mentioned, not exceeding the ſum of ſeven thouſand pounds, *according to the tenor* of their printed propoſals delivered with the ſaid policy, as by the ſaid deed poll or policy of aſſurance, relation being thereunto had will more fully appear: *And the ſaid Jacob Charles and Charles John further ſay*, that in the *printed propoſals mentioned* in and *referred* to by the ſaid policy of aſſurance, *it is expreſſed and declared*, that the ſaid company would not be accountable for the amount of any loſs or damage ariſing from fire cauſed by foreign invaſion, or civil commotion, or by any military or uſurped power; and *alſo that all perſons aſſured* by the ſaid company *ſuſtaining any loſs or damage by fire, ſhould forthwith give notice to the company at their office in Lombard ſtreet, and as ſoon as poſſible after, deliver in as particular* an account of their loſs or damage as the nature of their caſe would admit of, and make proof of the ſame by their oath or affirmation, and by their books of accounts, or other proper vouchers as ſhould be reaſonably required, *and ſhould procure a certificate under the hands of the miniſter and churchwardens, and of ſome reputable houſholders of the pariſh, not concerned in ſuch loſs, importing that they were acquainted with the character and circumſtances of the perſon or perſons inſured, and do know, or do verily believe that he, ſhe, or they really and by misfortune, without any kind of fraud or evil practice, have ſuſtained by ſuch fire, the loſs and damage therein mentioned*; and in caſe any difference ſhould ariſe between the aſ-

ſured and the company, touching any loſs or damage, ſuch difference ſhould be ſubmitted to the judgment and determination of arbitrators indifferently choſen, whoſe award in writing ſhould be concluſive and binding to all parties, and *when any loſs or damage ſhould have been duly proved*, the inſured ſhould immediately receive ſatisfaction to the full amount of the ſame without allowance of diſcount, or any other deduction whatever: And the ſaid Jacob Charles and Charles John in fact ſay, that after the making of the ſaid deed or policy of aſſurance, and after the ſeventh day of February, in the year of Our Lord 1792, and whilſt the ſaid deed or policy remained and continued in full force and effect, and before and until, and at the time of the loſs hereinafter next mentioned, there were in the dwelling houſe of the ſaid Joſeph Thomas and James Wilder, in the ſaid deed or policy of aſſurance mentioned, divers houſehold goods, printed books, ſtock and utenſils, wearing apparel, plate, china, glaſs, and looking-glaſs, plates, liquors, and mathematical and muſical inſtruments, wherein the ſaid Joſeph Thomas and James Wilder, during all that time were intereſted, and that the value thereof, together with the value of the intereſt of them the ſaid Joſeph Thomas and James Wilder in the ſaid leaſe in the ſaid policy of aſſurance mentioned, at the time of the loſs hereinafter next mentioned, amounted to divers large ſums of money, to wit, to all the monies by them inſured thereon, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jacob Charles and Charles John further ſay, that the ſaid dwelling-houſe, and all the ſaid houſehold goods, printed books, ſtock and utenſils, wearing apparel, plate, china, glaſs, looking-glaſs, plates, and mathematical and muſical inſtruments, being in the ſaid dwelling-houſe, were, after the making of the ſaid deed or policy of aſſurance, and after the ſaid ſeventh day of February, in the ſaid year of Our Lord 1792, and whilſt the ſaid deed or policy of aſſurance remained in full force and effect, and before the ſaid Joſeph Thomas and James Wilder became bankrupts, to wit, on the firſt day of July in the year of Our Lord 1792, burnt, conſumed, loſt, and deſtroyed by fire, which did not happen, nor was cauſed by any foreign invaſion or civil commotion, or by any military or uſurped power whatſoever, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and that the loſs and damage which thereby happened and accrued to them the ſaid Joſeph Thomas and James Wilder amounted to a large ſum of money, to wit, to the ſum of ſeven thouſand pounds, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jacob Charles and Charles John *further ſay, that* all the books or accounts of the ſaid Joſeph Thomas and James Wilder were burnt and deſtroyed by the ſaid fire, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jacob Charles and Charles John further ſay, that the ſaid Joſeph Thomas and James Wilder did forthwith, after the ſaid loſs, and before they became bank-

Loſs amounted to ſeven thouſand pounds.

Performance of conditions in the printed propoſals.

bankrupts, to wit, on the ſame day and year laſt aforeſaid, *gave notice of* the ſaid loſs to the ſaid company, at their ſaid office in Lombard-ſtreet: and did alſo, as ſoon as poſſible after the ſaid loſs, to wit, on the day and year laſt aforeſaid, deliver into the ſaid company, at their ſaid office as particular an account of their loſs and damage as the nature of the caſe did admit, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, *and were* then and there alſo ready and willing to make, and did then and there tender and offer to make proof of the ſaid loſs and damage by their oath, and did alſo then and there tender and offer to produce ſuch vouchers as could be reaſonably required in that behalf: And the ſaid Jacob Charles and Charles John *further ſay*, that the ſaid Joſeph Thomas and James Wilder did alſo, *as ſoon as poſſible* after their *ſaid loſs, and before they became bankrupts, to wit, on the day and year laſt aforeſaid, procure and deliver unto the ſaid company, at their ſaid office, a certificate under the hands of divers reputable houſeholders of the pariſh in which the ſaid dwelling-houſe was ſituate, not concerned in the ſaid loſs, to wit, one William Smith, one Elizabeth Rippon, one John Ellis, and one J. E. Bingball, importing that they the ſaid houſeholders were acquainted with the character and circumſtances of the ſaid Joſeph Thomas and James Wilder, and did verily believe that they the ſaid Joſeph Thomas and James Wilder really and by misfortune, and without any kind of fraud or evil practice, had ſuſtained by the ſaid fire the loſs and damage by them in the ſaid certificate mentioned,* to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jacob Charles and Charles John *further ſay, that the ſaid* Joſeph Thomas and James Wilder *did, as ſoon as poſſible after their ſaid loſs, and before they became bankrupts, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, apply to and requeſt one Edward Embry, then being* miſter *of the ſaid pariſh in which the ſaid laſt-mentioned dwelling-houſe was ſituate, and alſo one Huſſell Hutchins, and one John Bellamy, then being churchwardens of the ſaid pariſh, to ſign ſuch certificate of the ſaid laſt mentioned loſs, as by the ſaid laſt-mentioned propoſals required in that behalf, in order that the ſaid Joſeph Thomas and James Wilder might thereupon deliver ſuch certificate to the ſaid company, according to the form and effect of the ſaid printed propoſals: but the ſaid miniſter and churchwardens, without any reaſonable or probable cauſe whatſoever for ſo doing, did then and there wrongfully and unjuſtly refuſe, and ever ſince have refuſed, and ſtill do wholly refuſe to ſign any ſuch certificate* as aforeſaid; whereof the ſaid company afterwards, to wit, on the day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice, and although the capital ſtock and funds of the ſaid company, at the time of the ſaid loſs, were, and from that time hitherto have been, and yet are ſufficient to pay and reimburſe the ſaid Joſeph Thomas and James Wilder all ſuch damage and loſs as they have ſuſtained by the ſaid fire on their ſaid property, to wit at London aforeſaid, in the pariſh and ward aforeſaid, whereof the ſaid Thomas

The certificate they delivered.

Did requeſt the miniſter.

mas Worſley afterwards, to wit, on the ſame day and year laſt aforeſaid, there had notice; and although a difference aroſe between the ſaid Joſeph Thomas and James Wilder, and the ſaid company, after the happening of the ſaid loſs and damage, and before the ſaid Joſeph Thomas and James Wilder became bankrupts, touching the ſaid loſs and damage, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid; and although the ſaid Joſeph Thomas and James Wilder always after the happening of the ſaid loſs and damage until they became bankrupts, and the ſaid Jacob Charles and Charles John, aſſignees as aforeſaid, from that time hitherto have been ready and willing to ſubmit, and the ſaid Jacob Charles and Charles John, ſince they became ſuch aſſignees as aforeſaid, to wit, on the ſixth day of June, in the ſaid year of Our Lord 1793, at London aforeſaid, in the pariſh and ward aforeſaid, tendered and offered to the ſaid company to ſubmit the ſaid difference to the judgment and determination of arbitrators, to be indifferently choſen according to the form and effect of the ſaid printed propoſals: yet the ſaid company have not, although often requeſted, at any time hitherto paid or ſatisfied to the ſaid Joſeph Thomas and James Wilder, before they became bankrupts, or to the ſaid Jacob Charles and Charles John, aſſignees as aforeſaid, ſince the ſaid bankruptcy, the ſaid loſs or damage, or any part thereof, nor has the ſaid company ſubmitted the ſaid difference to the judgment and determination of ſuch arbitrators as aforeſaid, but have always hitherto refuſed, and ſtill refuſes to do, contrary to the form and effect of the ſaid deed or policy of aſſurance and of the covenant of the ſaid Thomas Worſley therein in that behalf made as aforeſaid: And whereas alſo by a certain other deed poll, commonly called a policy of inſurance, made before the ſaid Joſeph Thomas and James Wilder became bankrupts, to wit, on the ninth day of March, in the year of Our Lord 1793, at London aforeſaid, in the pariſh and ward aforeſaid, and ſealed with the ſeal of the ſaid Thomas, but which ſaid laſt mentioned deed-poll or policy of inſurance hath been ſince burnt by fire, or otherwiſe deſtroyed, and therefore cannot be produced here in court by the ſaid Jacob Charles and Charles John: It is witneſſed that the ſaid Joſeph Thomas and James Wilder, therein called Meſſrs. Joſeph Thomas Lockyer and James Wilder Bream, No. 33, Taviſtock-ſtreet, linen drapers, had paid the ſum of eleven pounds ſixteen ſhillings to the Phœnix Aſſurance Company of London, and having agreed to pay, or cauſe to be paid to them at their office in Lombard-ſtreet, the ſum of ten pounds eleven ſhillings, on the twenty-fifth day of March 1793, and the like ſum yearly on the day aforeſaid during the continuance of the ſaid laſt-mentioned policy of inſurance from loſs or damage by fire, not exceeding in each caſe the ſum or ſums thereinafter recited, upon the property therein deſcribed in the place or places therein ſet forth, and not elſewhere, unleſs allowed by indorſement previouſly made, as ſet forth in the margin *videlicet*, on the intereſt in the

2d Count, that the company have not ſubmitted to arbitration.

the leaſe of their then dwelling-houſe, only brick, ſituate as aforeſaid, not exceeding two hundred and ſeventy pounds, houſehold goods therein, three hundred and fifty pounds; printed books therein, forty pounds; ſtock and utenſils therein, ſix thouſand pounds; wearing apparel therein, two hundred pounds; plate therein, fifty pounds; china, glaſs, and looking-glaſs plates therein, fifty pounds; liquors therein, twenty pounds; mathematical and muſical inſtruments therein twenty pounds: and it is by the ſaid laſt-mentioned deed or policy declared, that the intent of the inſurance on the aforeſaid leaſe was to cover to the ſaid Meſſrs. Joſeph Thomas and James Wilder the value of their improvements in the aforeſaid buildings; and by the ſaid laſt-mentioned deed-poll or policy, the ſaid Thomas Worſley did covenant with the ſaid Joſeph Thomas and James Wilder, that from the ſeventh day of February, in the year of Our Lord 1792, and ſo long as the ſaid aſſureds ſhould duly pay or cauſe to be paid the ſaid premium aforeſaid at the times aforeſaid, and the truſtees or directors of the ſaid company for the time being ſhould agree to accept the ſame, the capital ſtock and funds of the ſaid company ſhould be ſubject and liable to pay to the ſaid aſſureds, his, her, or their heirs, executors, and adminiſtrators, all ſuch damage and loſs which the ſaid aſſureds ſhould ſuffer by fire on the property therein mentioned, not exceeding the ſum of ſeven thouſand pounds, according to the tenor of their printed propoſals delivered with the ſaid laſt-mentioned policy, as by the ſame deed-poll or policy of aſſurance, relation being thereunto had will more fully appear: And the ſaid Jacob Charles and Charles John further ſay, that in the printed propoſals mentioned in and referred to by the ſaid laſt-mentioned policy of aſſurance, it is expreſſed and declared that the ſaid company would not be accountable for the amount of any loſs or damage ariſing from fire cauſed by foreign invaſion or civil commotion, or by any military or uſurped power; and alſo, that all perſons aſſured by the ſaid company ſuſtaining any loſs or damage by fire, ſhould forthwith give notice to the company at their office in Lombard-ſtreet, and as ſoon as poſſible after deliver in as particular an account of their loſs or damage as the nature of the caſe would admit of, and make proof of the ſame by their oath or affirmation, and by their books of accounts or other proper vouchers as ſhould be reaſonably required, and ſhould procure a certificate under the hands of the miniſter and churchwardens, and of ſome reputable houſeholders of the pariſh not concerned in ſuch loſs, importing that they are acquainted with the character and circumſtances of the perſon or perſons inſured, and do know and do verily believe that he, ſhe, or they really, and by misfortune, without any kind of fraud or evil practice, had ſuſtained by ſuch fire the loſs and damage therein mentioned; and in caſe any difference ſhould ariſe between the aſſureds and the company touching any loſs or damage, ſuch difference ſhould be ſubmitted to the judgment and determination of arbitrators indifferently choſen, whoſe award in writing ſhould be concluſive and binding to all parties,

parties, and when any loſs or damage ſhould have been duly proved, the inſured ſhould immediately receive ſatisfaction to the full amount of the ſame, without allowance of diſcount or any deduction whatever: And the ſaid Jacob Charles and Charles John in fact ſay, that after the making of the ſaid laſt-mentioned deed or policy of aſſurance, and after the ſeventh day of February, in the year of Our Lord 1792, and whilſt the ſaid laſt-mentioned deed or policy remained in full force and effect, and before and until, and at the time of the loſs hereinafter mentioned, there were in the dwelling-houſe of the ſaid Joſeph Thomas and James Wilder, in the ſaid laſt-mentioned deed or policy of aſſurance mentioned, divers houſehold goods, printed books, ſtock and utenſils, wearing apparel, plate, china, glaſs, looking-glaſs plates, liquors, and mathematical and muſical inſtruments, wherein the ſaid Joſeph Thomas and James Wilder during all that time were intereſted, and that the value thereof, together with the value of the intereſt of them the ſaid Joſeph Thomas and James Wilder, in the ſaid leaſe in the ſaid laſt-mentioned policy of aſſurance mentioned, at the time of the loſs hereinafter mentioned, amounted to divers large ſums of money, to wit, to all the monies by them inſured thereon (that is to ſay), at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid Jacob Charles and Charles John further ſay, that the ſaid laſt-mentioned dwelling-houſe, and all the ſaid houſehold goods, printed books, ſtock and utenſils, wearing apparel, plate, china, glaſs, looking-glaſs plates, and mathematical and muſical inſtruments, being in the ſaid laſt-mentioned dwelling-houſe, were, after the making of the ſaid laſt-mentioned deeds or policy of aſſurance, and after the ſaid ſeventh day of February, in the ſaid year of Our Lord 1792, and whilſt the ſaid deed or policy of aſſurance remained in full force and effect, and before the ſaid Joſeph Thomas and James Wilder became bankrupts, to wit, on the firſt day of July in the year of Our Lord 1792, burnt, conſumed, loſt, and deſtroyed by fire, which did not happen, nor was cauſed by any foreign invaſion or civil commotion, or by any military or uſurped power whatſoever, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and that the loſs and damage which thereby happened and accrued to the ſaid Joſeph Thomas and James Wilder amounted to a large ſum of money, to wit, the ſum of ſeven thouſand pounds, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid company afterwards, to wit, on the ſame day and year laſt aforeſaid, there had notice; whereupon a certain difference then and there aroſe and happened by and between the ſaid Joſeph Thomas and James Wilder before they became bankrupts, and the ſaid company, touching the ſaid loſs and damage; and although the ſaid Joſeph Thomas and James Wilder always after the happening of the ſaid loſs or damage until they became bankrupts; and the ſaid Jacob Charles and Charles John, aſſignees as aforeſaid, from that time hitherto have been ready and willing to ſubmit, and the ſaid Jacob Charles and Charles John,

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aſſignees as aforeſaid, ſince they became ſuch aſſignees as aforeſaid, to wit, on the ſixth day of June, in the ſaid year of Our Lord 1703, at London aforeſaid, in the pariſh and ward aforeſaid, tendered and offered to the ſaid company to ſubmit the ſaid laſt-mentioned difference to the judgment and determination of arbitrators to be indifferently choſen according to the form and effect of the ſaid printed propoſals; and although the capital ſtock and funds of the ſaid company, at the time of the happening of the ſaid laſt-mentioned loſs, were, and from that time hitherto have been, and yet are ſufficient to pay and reimburſe all ſuch damage and loſs as the ſaid Joſeph Thomas and James Wilder have ſuffered by the ſaid laſt-mentioned fire, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; of all which premiſes the ſaid Thomas Worſley afterwards, to wit, on the day and year laſt aforeſaid, there had notice: Yet the ſaid company have not at any time hitherto ſubmitted the ſaid laſt-mentioned difference to the judgment and determination of ſuch arbitrators aforeſaid, but have always hitherto refuſed, and ſtill refuſe ſo to do, and the ſaid laſt-mentioned loſs and difference, and every part thereof, ſtill remains wholly due and unſatisfied, contrary to the form and effect of the ſaid laſt-mentioned deed or policy of aſſurance, and of the ſaid covenant of the ſaid Thomas Worſley ſo made in that behalf as aforeſaid: And ſo the ſaid Jacob Charles and Charles John in fact ſay, that the ſaid Thomas Worſley hath not kept his ſaid covenant ſo made with the ſaid Joſeph Thomas and James Wilder as aforeſaid, but hath broken the ſame, and to keep the ſame with them before they became bankrupts, or with the ſaid Jacob Charles and Charles John, ſince the ſaid Joſeph Thomas and James Wilder became bankrupts, the ſaid Thomas Worſley hath hitherto wholly refuſed, and ſtill doth refuſe, to the damage of the ſaid Jacob Charles and Charles John of ten thouſand pounds; and therefore they bring ſuit, &c.

AND the ſaid Thomas Worſley, by Edward Wollſtonecraft his attorney, comes and defends the wrong and injury, when, &c. and as to the ſuppoſed breach of covenant in the ſaid firſt Count of the ſaid declaration mentioned, the ſaid Thomas Worſley ſays, that the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees of the eſtate and effects of the ſaid Joſeph Thomas Lockyer and James Wilder Bream as aforeſaid, ought not to have or maintain their aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid Joſeph Thomas and James Wilder were not intereſted in the leaſe of the ſaid dwelling houſe in the ſaid firſt Count of the ſaid declaration mentioned, or in any houſehold goods, printed books, ſtock, and utenſils, wearing apparel, plate, china, glaſs, and looking-glaſs, plates, liquors, and mathematical and muſical inſtruments, burnt, conſumed, loſt and deſtroyed by fire therein in manner and form as the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees as aforeſaid,

1ſt Plea, bankrupt not interested.

said, have above in the said first Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.: And for further plea in this behalf as to the supposed breach of covenant in the said first Count of the said declaration the said Thomas Worsley, by the like leave of the court here for this purpose had and obtained according to the form of the statute in that case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the supposed loss and damage in the said first Count of the said declaration mentioned, happened and was occasioned by the fraud and evil practice of the said Joseph Thomas and James Wilder, or one of them by themselves, or their servants and agents in that behalf, to wit, at London aforesaid, in the parish and ward aforesaid; and this he the said Thomas Worsley is ready to verify; wherefore he prays judgment if the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid ought not to have or maintain the aforesaid action thereof against him: And for further plea in this behalf as to the said supposed breach of covenant in the said first Count of the said declaration mentioned, the said Thomas Worsley, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans ought not to have or maintain their aforesaid action thereof against him; because he says, *that the said minister and churchwardens in the said first Count mentioned, did not refuse, and ever since have not refused, and still do not refuse*, wrongfully and injuriously, without any reasonable or probable cause whatsoever for so doing, to sign *such certificate as in* the said first Count is mentioned *in manner and form as the said Jacob Wood, Charles Rogers, and Charles John Hemans*, assignees as aforesaid, have above in the said first Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.: And for further plea in this behalf as to the said supposed breach of covenant in the said second Count of the said declaration mentioned, the said Thomas Worsley says, that the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, ought not to have or maintain their aforesaid action thereof against him; because he says, that the said Joseph Thomas and James Wilder were not interested in the lease of the said dwelling house in the said second Count in the said declaration mentioned, or in any household goods, furniture, books, stock, and utensils, wearing apparel, plate, china, glass, and looking-glass plates, liquors, and mathematical and musical instruments, burnt, consumed, lost, and destroyed by fire therein, in manner and form as the said Jacob Wood, Charles Rogers, and Charles John Hemans, assignees as aforesaid, have above in the said second Count in that behalf alledged; and of this he the said Thomas Worsley puts himself upon the country, &c.: And for

2d, Fire happened by fraud, and evil practice of bankrupts.

3d, That minister and churchwarden did not refuse to sign certificate without reasonable and probable cause.

4th Plea to 2d Count like the first.

5th Plea like 2d.

for further plea in this behalf as to the ſaid ſuppoſed breach of covenant in the ſaid ſecond Count of the ſaid declaration mentioned, the ſaid Thomas Worſley, by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees as aforeſaid, ought not to have or maintain their aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid ſuppoſed loſs and damage in the ſaid ſecond Count of the ſaid declaration mentioned, happened and was occaſioned by the fraud and evil practice of the ſaid Joſeph Thomas and James Wilder, or one of them, by themſelves or their ſervants and agents, in that behalf, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and this he the ſaid Thomas Worſley is ready to verify; wherefore he prays judgment if the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees as aforeſaid, ought to have or maintain their aforeſaid action thereof againſt him, &c.: And for a further plea in this behalf as to the ſaid ſuppoſed breach of covenant in the ſaid ſecond Count of the ſaid declaration mentioned, the ſaid Thomas Worſley, by like leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſays, that the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees as aforeſaid, ought not to have or maintain their aforeſaid action thereof againſt him; becauſe he ſays, "that the ſaid dwelling-houſe in the ſaid deed poll, or policy of aſſurance from thence until and at the time of the ſuppoſed loſs in the ſaid ſecond Count of the ſaid declaration mentioned, was ſituated in the pariſh of St. Paul, Covent-Garden, in the county of Middleſex, and that neither the ſaid Joſeph Thomas Lockyer and James Wilder Bream, nor the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, aſſignees as aforeſaid, have nor hath any of them procured any ſuch certificate under the hands of the minister, church-wardens, and any reſpectable inhabitants of the ſaid pariſh of St. Paul, Covent-Garden, not concerned in the ſaid ſuppoſed loſs, as is mentioned and required in that behalf, in and by the ſaid printed proposals in the ſaid declaration and policy of aſſurance mentioned;" and this he the ſaid Thomas Worſley is ready to verify; wherefore he prays judgment if the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans ought to have or maintain their aforeſaid action thereof againſt him, &c. J. ADAIR.

3d Plea to 2d Count, have not procured certificate from miniſter, church-wardens, and reſpectable inhabitants, &c.

And the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, as to the plea of the ſaid Thomas Worſley by him firſt above pleaded in bar, as to the ſaid breach of covenant in the firſt Count of the ſaid declaration mentioned, and whereof the ſaid Thomas Worſley puts himſelf upon the country do ſo likewiſe: And as to the ſaid plea of the ſaid Thomas Worſley, by him

Replication, taking iſſue on all the pleas, except the laſt, and to that, bankrupt did as ſoon as poſſible produce two inhabitants, but that the miniſter and church-wardens, without any reaſonable cauſe, refuſed to ſign a certificate.

ſecondly above pleaded in bar as to the breach of covenant in the firſt Count of the ſaid declaration mentioned, the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, ſay, that they by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining their ſaid action thereof againſt the ſaid Thomas Worſley; becauſe they ſay, that the ſaid loſs and damage in the ſaid firſt Count of the ſaid declaration mentioned, did not happen and was not occaſioned by the fraud and evil practice of the ſaid Joſeph Thomas and James Wilder, or one of them, by themſelves or their ſervants and agents in that behalf, in manner and form as the ſaid Thomas Worſley in his ſaid plea ſecondly above pleaded in bar to the ſaid breach of covenant in the ſaid firſt Count of the ſaid declaration mentioned hath above alledged; and this the ſaid Jacob Wood, Chales Rogers, and Charles John Hemans pray may be enquired of *by the country*, &c.: And as to the plea of the ſaid Thomas Worſley by him thirdly above pleaded in bar as to the breach of covenant in the ſaid firſt Count of the ſaid declaration mentioned, and whereof the ſaid Thomas Worſley puts himſelf upon the country, they the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans *do ſo likewiſe*: And as to the plea of the ſaid Thomas Worſley by him firſt above pleaded in bar as to the breach of covenant in the ſecond Count of the ſaid declaration mentioned, and whereof the ſaid Thomas Worſley puts himſelf *upon the country*, the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans *do ſo likewiſe*: And as to the plea of the ſaid Thomas Worſley by him ſecondly above pleaded in bar as to the breach of covenant in the ſecond Count of the ſaid declaration mentioned, the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans ſay, that they, by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining their ſaid action thereof againſt the ſaid Thomas Worſley; becauſe they ſay, that the ſaid loſs and damage in the ſaid ſecond Count of the ſaid declaration mentioned, did not happen, and was not occaſioned by the fraud and evil practice of the ſaid Joſeph Thomas and James Wilder, or one of them, by themſelves or their ſervants and agents, in that behalf, in manner and form as the ſaid Thomas Worſley in his ſaid plea ſecondly above pleaded in bar to the breach of covenant in the ſaid ſecond Count in the ſaid declaration mentioned hath above alledged; and this the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans pray may be enquired of by the *country*, &c.: And as to the plea of the ſaid Thomas Worſley by him laſtly above pleaded in bar as to the breach of covenant in the ſecond Count of the ſaid declaration mentioned, they the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans ſay, that they, by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining their ſaid action againſt the ſaid Thomas Worſley; becauſe they ſay, "that the ſaid *Joſeph Thomas and* James Wilder *did, as ſoon as poſſible after* then ſaid *loſs, and before they became bankrupts*, to wit, on the ſaid firſt day

of

of July, in the year of Our Lord 1792, procure and deliver to the ſaid *company at their ſaid office* ſuch certificate as is mentioned and required in that behalf, in and by the ſaid printed propoſals in the ſaid declaration and policy of aſſurance mentioned, under the hands of divers reputable houſeholders of the ſaid pariſh of St. Paul, Covent-Garden, in which pariſh the ſaid dwelling-houſe was ſituate, *not concerned in the* loſs, to wit, one William Smith, one Elizabeth Rippon, *one John Ellis, one J. E. Burghall*; but that the miniſter and church-wardens of the ſaid pariſh have wrongfully refuſed *to ſign any* ſuch *certificate*," without any *reaſonable or probable cauſe* whatſoever for ſo doing, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; whereof the ſaid company afterwards, to wit, on the ſaid firſt day of July, in the year of Our Lord 1792 aforeſaid, there had notice; and this the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans are ready to verify; wherefore they pray judgment and their damages, by reaſon of the breach of covenant in the ſaid ſecond Count of the ſaid declaration above mentioned, to be adjudged to them, &c.

S. Le Blanc.

Rejoinder, that they did not wrongfully refuſe.

And the ſaid Thomas Worſley, as to the ſaid ſeveral replications of the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, whereof they have prayed that it may be enquired of by the country, doth the like: And as to the ſaid plea by them in reply pleaded to his ſaid plea by him laſtly above pleaded in bar, as to the breach of covenant in the ſaid ſecond Count of the ſaid declaration mentioned, ſays, that they, by reaſon of any thing therein alledged, ought not to have or maintain their aforeſaid action againſt him; becauſe, proteſting that the ſaid Joſeph Thomas and James Wilder did not procure and deliver to the ſaid company any ſuch certificate as in that replication is mentioned, for rejoinder in this behalf the ſaid Thomas Worſley ſays, "that the ſaid miniſter and church-wardens of the ſaid pariſh *have not wrongfully refuſed* and do refuſe to ſign any ſuch certificate, without any reaſonable or probable cauſe whatſoever for ſo doing, in manner and form as in that replication is alledged;" and of this he puts himſelf upon the country, &c.

J. Adair.

Surrejoinder, and iſſues.

And the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, as to the plea of the ſaid Thomas Worſley by him above pleaded, by way of rejoinder to the ſaid plea by them in reply pleaded to his ſaid plea by him laſtly above pleaded in bar, as to the breach of covenant in the ſaid ſecond Count of the ſaid declaration mentioned, and whereof the ſaid Thomas Worſley hath put himſelf upon the country, they the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans do the like; therefore, as well to try this iſſue as the ſaid ſeveral iſſues above joined, the ſheriffs are commanded that they cauſe to come here in three

weeks

weeks of the Holy Trinity twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe, as well, &c.

Jurors reſpited. At which day the jury between the parties of the plea aforeſaid was reſpited here until the morrow of All Souls then next following, unleſs Sir James Eyre, knight, the king's chief juſtice of the bench here, aſſigned by form of the ſtatute, &c. ſhould firſt come on Friday the eleventh day of July, at the Guildhall of the city of London; and now here, at this day, come the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, by their ſaid attorney, and the ſaid chief juſtice, before whom, &c. hath ſent here his record in theſe words:

Poſtea. Afterwards, that is to ſay, upon the day and year, and at the place within mentioned, before the right honourable Sir James Eyre, knight, the chief juſtice within named, come, as well the within named Jacob Wood, Charles Rogers, and Charles John Hemans, by their attorney within mentioned, as the within named Thomas Worſley, by his attorney alſo within mentioned; and the jurors of the jury within mentioned, being empanneled according to the form of the ſtatute in that caſe made and provided, and called, ſome of them, that is to ſay, John Wilkinſon, John Peter Hankey, John Everth, and James Baril appear, and on that jury they are ſworn; and becauſe the reſt of the jurors of that jury have not appeared, others of the byſtanders, by the ſheriff, at the requeſt of the ſaid Jacob, Charles Rogers, and Charles John Hemans, and by the command of the ſaid chief juſ-
Talis. tice, are newly ſet down in and added to the pannel, according to the form of the ſtatute: And the jurors ſo added, that is to ſay, Joſeph Naſh, William Bartholomew, George Hughes, John Thomas, William How, John Layne, Joſeph Summers, and James Stockford, together with the jurors aforeſaid, being ſworn to declare the truth touching the matters within contained as to the iſſue firſt within joined between the parties on their oath, ſay, that Joſeph Thomas Lockyer and James Wilder Bream, in the within declaration named, were intereſted in the leaſe of the dwelling-houſe in the firſt Count of the ſaid declaration mentioned, and were intereſted in the houſehold goods, printed books, ſtock, and utenſils, wearing apparel, plate, china, glaſs, and looking-glaſs plates, liquors, and mathematical and muſical inſtruments, burnt, conſumed, loſt, and deſtroyed by fire therein in manner and form as the ſaid Jacob, Charles Rogers, and Charles
2nd Iſſue. John Hemans, have within in pleading alledged: And as to the iſſue ſecondly within joined between the parties, the jurors aforeſaid, on their oath aforeſaid, further ſay, that the miniſter and church-wardens in the firſt Count of the ſaid declaration mentioned, did refuſe, and have refuſed and ſtill do refuſe, wrongfully and injuriouſly, without any reaſonable or probable cauſe whatſoever for ſo doing, to ſign ſuch certificate as in the ſaid firſt Count is mentioned, in manner and form as the ſaid Jacob, Charles Rogers,

Rogers, and Charles John [illegible] within in pleading [illegible]
And as to the iſſue thirdly within joined between the parties, the jurors aforeſaid, on their oath aforeſaid, further ſay, that the ſaid Joſeph Thomas and James Wilder were intereſted in the ſaid dwelling-houſe, in the ſecond Count of the within declaration mentioned, and in the houſehold goods, furniture, books, ſtock, and utenſils, wearing apparel, plate, china, glaſs, and looking-glaſs plates, liquors, and mathematical and muſical inſtruments, burnt, conſumed, loſt, and deſtroyed by fire therein, in manner and form as the ſaid Jacob, Charles Rogers, and Charles John have within in pleading alſo alledged: And as to the To 4th I
iſſue fourthly within joined between the parties, the jurors aforeſaid ſay, that the loſs and damage in the firſt Count of the ſaid declaration mentioned did not happen and was not occaſioned by the fraud or evil practice of the ſaid Joſeph Thomas and James Wilder, or either of them, by themſelves or their ſervants or agents, in that behalf, in manner and form as the ſaid Thomas Worſley hath within in pleading alſo alledged: And as to the iſſue To 5th I
fifthly within joined between the ſaid parties, the jurors aforeſaid, on their oath aforeſaid, further ſay, that the loſs or damage in the ſaid ſecond Count of the ſaid declaration mentioned, did not happen and was not occaſioned by the fraud or evil practice of the ſaid Joſeph Thomas and James Wilder, or either of them, by themſelves or their ſervants or agents, in that behalf, in manner and form as the ſaid Thomas Worſley hath in his ſaid plea ſecondly pleaded in bar as to the breach of covenant in the ſaid ſecond Count of the ſaid declaration alledged: And as to the iſſue laſtly within joined between the To 6th
parties, the jurors aforeſaid, on their oath aforeſaid, further ſay, that the miniſter and church wardens in the ſaid ſecond Count of the ſaid declaration mentioned, have wrongfully refuſed, and ſtill do refuſe to ſign ſuch certificate as is mentioned and required in that behalf, in and by the ſaid printed propoſals in the ſaid declaration and policy of aſſurance mentioned, without any reaſonable cauſe whatſoever for ſo doing, in manner and form as the ſaid Jacob, Charles Rogers, and Charles John Hemans, have within, in their replication to the ſaid plea of the ſaid Thomas Worſley by him laſtly within pleaded in bar as to the breach of covenant in the ſaid ſecond Count of the ſaid declaration within mentioned alledged; and they aſſeſs the damages of the ſaid Jacob, Charles Rogers, and Charles John Hemans, by reaſon of the premiſes, over and beſides their coſts and charges by them in and about their ſuit in this behalf expended, to three thouſand pounds, and for thoſe coſts and charges to forty ſhillings. And becauſe Curia.
the juſtices here are willing to adviſe themſelves of and upon the premiſes before they give judgment thereon, day is given to the parties aforeſaid here until in eight days of St. Hilary, to hear their judgment thereon, for that the ſaid juſtices here thereon are not yet, &c; at which day here come the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, by their ſaid attorney; and becauſe the ſaid juſtices here are willing further to adviſe

Continuances [illegible].

themſelves of and upon the premiſes before they give judgment thereon, further day is given to the parties aforeſaid here until in fifteen days of Eaſter, to hear their judgment thereon, for that the ſaid juſtices here thereon are not yet, &c.; at which day here come the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, by their ſaid attorney; and becauſe the juſtices here are willing further to adviſe themſelves of and upon the premiſes before they give judgment thereon, further day is given to the parties aforeſaid here until on the morrow of the Holy Trinity, to hear their judgment thereon, for that the ſaid juſtices here thereon are not yet, &c.; at which day here come the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, by their ſaid attorney, and hereupon, the premiſes being ſeen and by the juſtices here fully underſtood, it is conſidered that the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, as aſſignees as aforeſaid, recover againſt the ſaid Thomas Worſley, their damages aforeſaid, to three thouſand and two pounds, by the jury aforeſaid, in form aſſeſſed; and alſo four hundred and eleven pounds ten ſhillings to the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, at their requeſt, for their coſts and charges aforeſaid, by the court here for increaſe adjudged, which ſaid damages, in the whole, amount to three thouſand four hundred and thirteen pounds ten ſhillings: And the ſaid Thomas Worſley, in mercy, &c.

Aſſignment of error.

Afterwards, to wit, on Saturday next after eight days of St. Hilary, in this ſame term, before our lord the king at Weſtminſter, comes the ſaid Thomas Worſley, by Edward Wolliſtoncraft his attorney, and ſaith, that in the record and proceedings aforeſaid, and alſo in giving the judgment aforeſaid, there is manifeſt error, in this, to wit, that the declaration aforeſaid, and the matters therein contained, and alſo the replication and other pleadings of the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, are not ſufficient in law for them to have or maintain their ſaid action againſt him; there is alſo error in this, that by the record aforeſaid it appears, that the judgment in the plea aforeſaid given, was ſo given for the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans againſt the ſaid Thomas Worſley, whereas, by the law of the land, that judgment ought to have been given for the ſaid Thomas againſt the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans; and he the ſaid Thomas prays, that for the errors aforeſaid, and other errors manifeſt on the ſaid record and proceedings, the judgment aforeſaid may be reverſed, annulled, and held entirely for nothing, and that he may be reſtored to all that he hath loſt thereby, and that the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans may rejoin to theſe errors, &c. GEO. WOOD.

Joinder in error.

And the ſaid Jacob Wood, Charles Rogers, and Charles John Hemans, by Alexander Anneſley their attorney, ſay, that the ſaid judgment ought not to be reverſed, annulled, or held for nothing, by reaſon of any thing above alledged; becauſe they ſay, that there

there is not any error either in the record or proceedings aforesaid, or in the declaration or replication, or other pleadings of the said Jacob Wood, Charles Rogers, and Charles John Hemans, or in the giving of the judgment aforesaid; and they pray that the court here may proceed to the examination, as well of the record and proceedings aforesaid, as of the matter above assigned for error, and that the said judgment may be in all things affirmed.

WILLIAM LAMBE.

Judgment in C. P. reversed in B. R. Feb. 6. T. R. [illegible] reported but decided that the [illegible] of the minister, &c. was a condition and precedent to the right of plaintiff below to recover. See post. 411. Oldham v. Bewicke.

LANCASHIRE, to wit. Edward Crumpsty complains of Thomas Staveley, Joseph Brooks, and Benjamin Heywood, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of breach of covenant; for that whereas by a certain deed-poll or policy of assurance made the first day of November, in the year of Our Lord 1792, at Liverpool, in the county of Lancaster, sealed with the seals of the said Thomas, Joseph, and Benjamin, and which said Thomas, Joseph, and Benjamin, were three of the parties or acting members of the society of the Liverpool Fire Office hereafter mentioned (but which said deed is lost and destroyed by accident) reciting that the said Edward, by the name of Edward Crumpsty, junior, of Liverpool, grocer, had paid the sum of sixteen shillings and four-pence to the society of the Liverpool Fire Office, and agreed to pay, or cause to be paid to them at their said office, the sum of fourteen shillings on the first day of January 1794, and the like sum of fourteen shillings yearly on the first day of January during the continuance of that policy, for insurance from loss or damage by fire, of stock in trade six hundred and fifty pounds, of household goods fifty pounds, in his dwelling-house and shop, No. 29, in Park-lane, Liverpool, brick, slated, and no hazardous trade on goods allowed therein, that from the date of the said deed-poll, and so long as the said Edward Crumpsty should duly pay, or cause to be paid, the said sum of fourteen shillings at the times and places aforesaid, and the trustees or acting members of the said society for the time being should agree to accept the same, and the stock and fund of the said society should be subject and liable to pay to the said Edward Crumpsty, his executors, administrators, and assigns, all such his damage and loss which he the said Edward Crumpsty should suffer by fire, not exceeding the sum of seven hundred pounds, according to the exact tenor of their printed proposals, dated the first day of January 1777: And the said Edward further says, that the said printed proposals in and by the said deed poll mentioned and referred to are as follow (that is to say), from the Liverpool Fire Office, in Cable street, for insuring houses and other buildings, goods, wares, and merchandizes, from loss and damage by fire, the great ruin and destruction occasioned by the dreadful consequences of accidents by fire, sufficiently

Declaration against the society of the Liverpool Fire Office on a policy of assurance of a dwelling-house, stock in trade, and goods of defendant, whereof the original deed was lost.

Proposals set out.

ently point out the utility of offices of insurance against these calamities, the good effects of such institutions have been frequently experienced, and many who would have been otherwise reduced to indigence and beggary have been supported in affluence, and enjoyed the comfort and happiness of having their property secured from one of the greatest dangers, it is therefore certainly to be wished that institutions of this nature should be increased and extended as much as possible; with this view the proprietors have established this office, and flatter themselves their undertaking will be considered as laudable, and deserve the approbation and support of the public, in order that the insured may possess every public advantage, and be secure in the punctual payment of any losses that may arise, a fund of eighty thousand pounds is appropriated for carrying this scheme into execution, and insurances will be made on the following terms: annual premiums to be paid for insurances since insured, any sum not exceeding one hundred pounds common insurance two shillings *per annum*, hazardous insurances three shillings *per annum*, double hazardous insurances five shillings *per annum*, from two hundred pounds to one thousand pounds common insurance two shillings *per cent. per annum*, hazardous insurance three shillings *per cent. per annum*, double hazardous insurance five shillings *per cent. per annum* from one thousand pound to two thousand pounds; common insurances two shillings and sixpence *per cent. per annum*, hazardous insurance four shillings *per cent. per annum*, double hazardous insurance seven shillings and sixpence *per cent. per annum*; from two thousand pounds to three thousand pounds common insurance two shillings and sixpence *per cent. per annum*, hazardous insurance five shillings *per cent. per annum*, and upon the following conditions: Article the first, all policies shall be signed and sealed by three or more justices or acting members, by which policies may be insured, houses and other buildings, household furniture, printed books, goods, wares, merchandizes, and utensils and implements in trade, being the property of the persons insuring, except all manner of writing-books of accounts, bills, bonds, tallies, ready money, jewels, gunpowder, pictures, drawings, and prints not in trade: Article the second, houses, buildings, and goods in trust, and merchandizes on commission (except as aforesaid) may be insured, provided the same are declared in the policy to be in trust or on commission, but not otherwise: Article the third, on bespeaking policies, all persons are to deposit nine shillings and sixpence for the policy, stamp-duty, and mark, and shall pay the premium to the next quarter-day, and from thence for one year more at least, and shall, as long as the managers agree to accept the same, make all future payments annually at the said office, within fifteen days after the day limited by their respective policies, upon forfeiture of the benefit thereof, and no insurance is to take place till the premium be actually paid by the insured, his, her, or their agent or agents: Article the fourth, the several heads of insurance first, common insurances are buildings covered with slate, tile, or lead,

Article 1st.

Article 2d.

Article 3d.

Article 4th.

lead, and built on all ſides with brick or ſtone, and goods or merchandizes therein not hazardous, and where no hazardous trades are carried on; ſecond hazardous inſurances are timber or plaiſter buildings, and goods and merchandizes therein not hazardous, or brick or ſtone buildings wherein hazardous goods or trades are depoſited or carried on, ſuch as apothecaries, chymiſts, bread and biſcuit bakers, coopers, cabinet-makers, carpenters, colourmen, ſhip and tallow-chandlers, ſtable-keepers, innholders, ſail and rope makers, malt-houſes, hemp, flax, tallow, pitch, tar, and turpentine; third double hazardous inſurances are thatched buildings and goods, and merchandizes therein, timber or plaiſter buildings wherein hazardous goods or trades are depoſited or carried on, alſo ſhip-carpenters, boat builders, china, glaſs, earthen ware, hay, ſtraw, all manner of fodder, and corn unthraſhed: Article the fifth, any number of houſes, outhouſes, houſehold furniture, printed books, ſtock in trade, goods in truſt or on commiſſion, or wearing apparel or plate therein may be inſured in one policy, provided the ſum inſerted on each is particularly mentioned, and in all inſurances the premium is to be paid for one hundred pounds, and if inſurances are deſired for mills a ſpecial agreement may be made for the ſame, or any larger ſums than are ſpecified in the table, or in any other inſurance more hazardous than thoſe already deſcribed, as ſugar-bakers, diſtillers, or ſuch like, by reaſon of the nature of trade or goods, narrowneſs of the place, or other dangerous circumſtances: Article the ſixth, to prevent frauds, perſons inſured by this office ſhall receive no benefit from their policies if the ſame houſes or goods, &c. are inſured in any other office, unleſs ſuch inſurance be firſt ſpecified and allowed by an indorſement on the back of the policy, in which caſe this office will pay their rateable proportion on any loſs or damage, and if any perſon or perſons ſhall inſure his, her, or their houſes, goods, wares, or merchandizes, and ſhall cauſe the ſame to be deſcribed in the policy, otherwiſe than as they really are ſo, as the ſame be inſured at a lower premium than propoſed in the table, ſuch inſurances ſhall be of no force, nor the perſon inſuring receive any benefit by ſuch policy in caſe of any loſs or damage: Article the ſeventh, no loſs or damage to be paid on fire happening by any invaſion, foreign enemy, or civil commotion, or any military or uſurped power whatſoever: Article the eighth, when any perſon dies, the policy and inſtrument therein ſhall continue to the heir, executor, or adminiſtrator reſpectively, to whom the right of the premiſes inſured ſhall belong, provided before any new payment made ſuch heir, executor, or adminiſtrator do procure his or her right to be indorſed on the policy at the ſaid office, or the premium to be paid in the name of the ſaid heir, executor, or adminiſtrator: Article the ninth, perſons changing their habitations or warehouſes may preſerve the benefit of their policies, if the nature and circumſtance of ſuch policy is not altered; but ſuch inſurance will be of no force till ſuch removal or alteration is allowed by indorſement on the policy, aſſurances on buildings

Article 5th.

Article 6th.

Article 7th.

Article 8th.

Article 9th.

and goods are delivered on diſtinct and ſeparate riſks, ſo that the premium on goods is not advanced by reaſon of any inſurance on the buildings wherein the goods are kept, nor the premium on the buildings by reaſon of any inſurance on the goods: Article the tenth, perſons inſured ſuſtaining any loſs or damage by fire, are forthwith to give notice thereof at the office, and as ſoon as poſſible afterwards deliver in as particular an account of their loſs and damage as the nature of the caſe will admit of, and make proof of the ſame by oath or affirmation, according to the form practiſed in the ſaid office, and by their books of accounts or other proper vouchers as ſhall be reaſonably required, and procure a certificate under the hands of the miniſter and churchwardens, together with ſome other reputable inhabitant of the pariſh not concerned in ſuch loſs, importing that they are well acquainted with the character and circumſtances of the perſon or perſons inſured, and do know or verily believe that he, ſhe, or they, really and by misfortune, without any fraud or evil practice, have ſuſtained by ſuch fire the loſs and damage as his, her, or their loſs, to the value therein mentioned; but till ſuch affidavit and certificate of ſuch the inſureds loſs ſhall be made and produced, the loſs money ſhall not be payable, and if there appear any fraud or falſe ſwearing, ſuch ſufferers ſhall be excluded from all benefit by their policies, and in caſe any difference ariſe between the office and the inſured touching any loſs or damage, ſuch difference ſhall be ſubmitted to the judgment and determination of arbitrators indifferently choſen, whoſe award in writing ſhall be concluſive and binding to all parties, and where any loſs or damage is ſettled and adjuſted, the inſured is to receive immediate ſatisfaction for the ſame, without any deduction. *N.B.* In adjuſting loſſes on houſes or goods, no wainſcot or any ſculpture or carved work is to be valued at more than three ſhillings *per* yard, or plate at more than five ſhillings and ſixpence *per* ounce. To encourage the removal of goods in caſe of fire, this office will allow the reaſonable charges attending the ſame, and make good the ſufferer's loſs, whether deſtroyed, loſt, or damaged by ſuch removal: Article the eleventh, no receipts are to be taken for any premiums of inſurances, but ſuch as are printed and iſſued for the ſaid office, and witneſſed by one of the clerks or agent of the ſaid office; perſons may inſure for any number of years more than one, and in ſuch caſe there will be an abatement of ſixpence in the pound *per* annum, on the premiums agreed for, for every year except the firſt; for inſtance, in a common inſurance of one thouſand pounds for ſeven years, the premium to be paid by the table will be ſeven pounds, from which ſixpence in the pound *per* annum is to be deducted for the laſt ſix years, that is, three ſhillings and ſixpence *per* annum, which amounts to one pound one ſhilling, and reduces the ſum to be paid to five pounds nineteen ſhillings, and in the ſame proportion for any other ſum or number of years, and perſons inſuring can never be ſubject to any calls or contributions to make good loſſes; for the accommodation and

10th.

11th.

further

further encouragement of perſons inſuring in this office, they have provided fire-engines, buckets, ladders, fire-hooks, and every neceſſary implement for preventing and extinguiſhing of fires; and there will be kept conſtantly in pay a number of ſtrong active men to be employed in caſe of accident, in preventing the ſpreading of fires and removing goods; the ſociety will alſo give aſſiſtance to cities and great towns, making a large number of inſurance in this office, to provide themſelves with the ſame conveniences as by the ſaid deed and propoſals more fully appears: And the ſaid Edward further ſays, that after the making and effecting of the ſaid deed-poll or policy of aſſurance, and whilſt the ſame remained in force, to wit, on the twelfth day of April, in the year of Our Lord 1793, to wit, at Liverpool aforeſaid, in the county aforeſaid, divers goods, being the ſtock in trade and houſehold goods of the ſaid Edward, not hazardous, were depoſited in the ſaid dwelling-houſe and ſhop in the ſaid deed-poll or policy of inſurance mentioned, being brick, ſlated, and then having no hazardous trade or goods therein of great value, to wit, of the value of ſeven hundred and eighty pounds; and that afterwards, and whilſt the ſaid policy remained in force, to wit, on the day and year aforeſaid, at Liverpool aforeſaid, in the county aforeſaid, the ſaid goods, ſo being in the ſaid dwelling-houſe and ſhop of the ſaid Edward, happened to become, and then and there were on fire, and were then and there damaged, burnt, conſumed, and deſtroyed by fire, which did not happen by any invaſion, foreign enemy, or civil commotion, or any military or uſurped power whatſoever, that is to ſay, at Liverpool aforeſaid, in the county aforeſaid, whereby the ſaid Edward then and there ſuſtained damages to a large amount, to wit, to the amount of the ſum by him inſured on the ſaid goods ſo burnt, conſumed, and damaged: And the ſaid Edward further ſays, that the ſaid goods in the ſaid deed or policy mentioned, at the time of the making the ſaid deed, were not, nor at any time ſince have been inſured in any other office, and that the ſame goods in the ſaid deed or policy mentioned were and are truly deſcribed, and not otherwiſe than as they really were, or ſo as to cauſe the ſame to be inſured at a lower premium than propoſed in the table in the ſaid propoſals mentioned, to wit, at Liverpool aforeſaid, in the county aforeſaid: And the ſaid Edward further ſays, that he did forthwith after the ſaid loſs, to wit, on the fourteenth day of April, in the year of Our Lord 1793, at Liverpool aforeſaid, in the county aforeſaid, give notice thereof to the ſaid ſociety in the ſaid office, and alſo as ſoon as was conveniently poſſible afterwards, to wit, on the nineteenth day of July in the year laſt aforeſaid, did there deliver in as particular an account of the ſaid loſs and damage as the nature of the caſe would admit of, and did there make proof of the ſame, by his oath, according to the form practiſed in the ſaid office, and by his books of accounts and other proper vouchers in ſuch manner as was required; and did alſo afterwards, to wit, on the twenty-ſeventh day of Auguſt, in the year laſt aforeſaid, procure

and deliver at the ſaid office a certificate under the hands of George Monk, then, and at the time of the ſaid loſs, being miniſter of the pariſh of Liverpool, and William Jackſon and William Gibſon, then being churchwardens of the ſame pariſh, and alſo of Richard Walker, Samuel Hemingway, and James Davies, then being ſome other reſpectable inhabitants of the ſame pariſh, who were not concerned in ſuch loſs, importing, that they were well acquainted with the character and circumſtances of the ſaid Edward, and that they did verily believe that he by misfortune, without fraud, or evil practice, had ſuſtained by the ſaid fire a loſs to the amount of a large ſum of money, to wit, the ſum of ſeven hundred and twenty pounds; of all which ſaid premiſes the ſaid Thomas, Joſeph, and Benjamin afterwards, to wit, on the ſame day and year laſt aforeſaid, at Liverpool aforeſaid, in the county aforeſaid, had notice: And the ſaid Edward further ſays, that he hath always been ready and willing to ſubmit to all matters in difference between him and the ſaid office, touching the ſaid loſs, to the judgment and determination of arbitrators indifferently choſen between them; and that although he the ſaid Edward hath, in all things, conformed himſelf to and obſerved all and ſingular the ſtipulations, conditions, and agreements which on his part were to be obſerved and performed, according to the form and effect of the ſaid deed or policy, and of the ſaid propoſals; and although the ſtock and fund of the ſaid ſociety was ſufficient to pay to the ſaid Edward his ſaid loſs ſuſtained by the ſaid fire, to wit, at Liverpool aforeſaid, in the county aforeſaid; yet the ſaid Edward hath not, out of the funds of the ſaid ſociety, or in any other manner, been repaid or reimburſed his ſaid loſs, or any part of his ſaid loſs, but the ſame and every part thereof, although often duly demanded, is ſtill wholly in arrear and unpaid to the ſaid Edward, contrary to the form and effect of the ſaid covenant of the ſaid Thomas, Joſeph, and Benjamin in that behalf made as aforeſaid; and ſo the ſaid Edward ſaith, that the ſaid Thomas, Joſeph, and Benjamin, although often requeſted, have not kept with the ſaid Edward their ſaid covenant, but have broken the ſame, and to keep the ſame with him hath hitherto wholly refuſed, and ſtill do refuſe, to the damage of the ſaid Edward of one thouſand pounds; and therefore he brings his ſuit, &c. T. BARROW.

[illegible] that plaintiff not inſured in the [illegible] &c. and that [illegible] were burnt ſaid, &c.

And the ſaid Thomas, Joſeph, and Benjamin, by Richard Statham their attorney, come and defend the wrong and injury, when, &c. and as to the ſuppoſed breach of covenant in the ſaid declaration mentioned, the ſaid Thomas, Joſeph, and Benjamin ſay, that the ſaid Edward ought not to have or maintain his aforeſaid action thereof againſt them, becauſe they ſay, that the ſaid Edward was not intereſted in any goods, being the ſtock in trade, or houſhold goods of the ſaid Edward, burnt, conſumed, loſt, and deſtroyed by fire, in manner and form as the ſaid Edward hath above in the ſaid declaration in that behalf alledged, and of this they the ſaid Thomas, Joſeph, and Benjamin put themſelves upon

the

the country, and the ſaid Edward Crumpſty doth the like: And for further plea in this behalf, as to the ſaid ſuppoſed breach of covenant in the ſaid declaration mentioned, they the ſaid Thomas, Joſeph, and Benjamin, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſay, that the ſaid Edward ought not to have or maintain his aforeſaid action thereof againſt them, becauſe they ſay, that the ſuppoſed loſs and damage in the ſaid declaration mentioned, happened and was occaſioned by the fraud and evil practice of the ſaid Edward in that behalf, to wit, at Liverpool aforeſaid, in the county aforeſaid; and this they the ſaid Thomas, Joſeph, and Benjamin are ready to verify; wherefore they pray judgment if the ſaid Edward ought to have or maintain his aforeſaid action thereof againſt them; and for further plea in this behalf, as to the ſaid ſuppoſed breach of covenant in the ſaid declaration mentioned, they the ſaid Thomas, Joſeph, and Benjamin, by leave of the court here for that purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, ſay, that the ſaid Edward ought not to have or maintain his aforeſaid action thereof againſt them, becauſe they ſay, that the ſaid George Monk was not at the ſaid ſeveral times in that behalf in the ſaid declaration mentioned, miniſter of the pariſh of Liverpool, as in the ſaid declaration above alledged; and of this they put themſelves upon the country, &c. and the ſaid Edward doth the like.

SAMUEL HEYWOOD.

Replication ad plea, ing the ſa

And the ſaid Edward, as to the ſaid plea of the ſaid Thomas, Joſeph, and Benjamin, by them ſecondly above pleaded in bar, ſays, that he ought not by reaſon of any thing in that plea alledged, to be barred from having and maintaining his aforeſaid action thereof againſt them, becauſe he ſays, that the ſaid loſs and damage in the ſaid declaration mentioned, did not happen, and was not occaſioned by the fraud and evil practice of the ſaid Edward in that behalf, as the ſaid Thomas, Joſeph, and Benjamin have in their ſaid plea by them ſecondly above pleaded in bar alledged, and this the ſaid Edward prays may be enquired of by the country, and the ſaid Thomas, Joſeph, and Benjamin do the like: And becauſe the iſſues aforeſaid between the ſaid parties above joined ought to be tried by men of the county palatine of Lancaſter, within the ſame county, where the writ of our lord the king doth not run, and not elſewhere; therefore let the tenor of the record of plaint aforeſaid be ſent to his ſaid majeſty's juſtices there, ſo that the ſame juſtices, by his majeſty's writ of that county, do command the ſheriff of the ſame county of Lancaſter, that he cauſe to come before the ſaid juſtices at their next ſeſſions of aſſize there before them to be holden, after the ſaid record ſhall be delivered to them, twelve good and lawful men of the body of the ſame county of Lancaſter, each of whom, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. and when the verification and iſſues aforeſaid ſhall be there made and tried, that then the

Mittimus juſtices caſter.

Venire.

the ſaid juſtices ſhall ſend the record of the ſaid plaint, together with every thing that ſhould be done thereon in his ſaid majeſty's court there, to our ſaid lord the king at Weſtminſter, at a day which the ſame juſtices ſhall appoint to the ſaid parties to be in the ſame court, then to hear judgment thereon, &c.

THOMAS BARROW.

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LONDON, ſſ. The Governors and Company of the Royal Exchange Aſſurance of houſes and goods from fire, were ſummoned to anſwer Henry Robinſon, eſquire, in a plea, that they keep with him the covenant made between them, according to the force, form, and effect of a certain deed thereof made to him by the ſaid G. and C. &c.; and whereupon the ſaid Henry, by A. B. his attorney, ſays, that whereas by a certain deed by the ſaid G. and C. called an inſtrument or policy of aſſurance, by them made on, &c. at, &c. which ſaid deed, ſealed with the common ſeal of the ſaid G. and C. the ſaid Henry brings into court here, bearing date the ſame day and year, reciting, that whereas the ſaid Henry had agreed to pay, or cauſe to be paid unto the treaſury of the corporation of the ſaid Royal Exchange Aſſurance yearly, and every year during the continuance of the ſaid policy, the ſum of twelve ſhillings and ſixpence, for the aſſurance of four brick houſes adjoining, ſituate on the north ſide of, &c. then in the ſeveral tenures of, &c. not exceeding one hundred and twenty-five pounds each houſe, two of the ſaid tenants being bakers, from loſs or damage, or by reaſon or means of fire during the continuance of the ſaid policy, not exceeding the ſum of five hundred pounds in the whole, they the ſaid G. and C. of, &c. did covenant and agree with the ſaid Henry, that ſo long as the ſaid Henry ſhould well and truly pay, and cauſe to be paid the ſaid annual ſum of twelve ſhillings and ſixpence into the treaſury of the ſaid corporation as aforeſaid, and the directors of the ſaid company ſhould agree to accept the ſame, that then the capital ſtock, eſtates, and ſecurities of the ſaid company ſhould be ſubject and liable, and were by the ſaid deed made ſubject and liable to pay, make good, and ſatisfy to the ſaid Henry, his executors, adminiſtrators, and aſſigns, all ſuch loſs and damage which ſhould or might happen by, or by reaſon or means of fire to the houſes aforeſaid, or to ſuch new houſes as ſhould from time to time be built or placed in the room thereof, during the continuance of the ſaid policy, not exceeding the ſum of five hundred pounds, to be paid to the ſaid Henry, his executors, &c. within ſixty days after ſuch loſs or damage ſhould happen, if, and in caſe the ſaid Governor and Company for the time being, their officers, workmen, or aſſigns, ſhould not, within the ſaid ſixty days, at the charges of the ſaid corporation, cauſe or procure the houſes aforeſaid, or ſuch new houſes to be begun to be rebuilt, repaired, and made good, and within a reaſonable time then next after, put into as good condition as the ſame was or were in at the time when ſuch fire or fires ſhould have happened; provided likewiſe, and it

was

was by the ſaid deed further declared to be the true intent and meaning of the ſaid policy, that the ſame ſhould not take place and be binding on the ſaid corporation till the premium for the year ſhould be paid, as by the ſaid deed more fully appears: And the ſaid Henry in fact ſaith, that he the ſaid Henry yearly and every year, during nine years next enſuing the making of the ſaid deed, well and truly paid the ſaid annual ſum of twelve ſhillings and ſixpence into the treaſury of the corporation aforeſaid; and the directors of the ſaid corporation for the time being, yearly, and every year during the ſaid nine years, agreed to accept, and did accept the ſame of the ſaid Henry, to wit, at, &c.; and the ſaid Henry further ſays, that in the laſt year of the ſaid nine years, and during the continuance of the ſaid policy, to wit, on, &c. two houſes of the ſaid four houſes ſpecified in the ſaid deed, to wit, one houſe in the ſaid deed mentioned to have been in the tenure of A. B. and one other houſe in the ſaid deed mentioned to have been in the tenure of the ſaid C. D. happened to be and were ſet on fire, and much burnt, damnified, and hurt by the ſaid fire, and that the loſs and damage which happened to each of the two houſes by the ſaid fire, on the ſame day and year, amounted to a large ſum of money, to wit, to the ſum of one hundred and twenty-five pounds each houſe, to wit, at, &c. whereof the ſaid G. and C. then and there had notice; and yet the ſaid G. and C. or their officers, workmen, or aſſiſtants, or any of them, did not within ſixty days after the ſaid loſs and damage ſo happened to the ſaid two houſes by the ſaid fire as aforeſaid, cauſe or procure the ſaid two houſes or either of them, or any part thereof to be begun at the charge of the ſaid corporation to be rebuilt, repaired, and made good, nor within a reaſonable time then next after, put into as good a condition as the ſame were in when the ſaid fire happened, nor have the ſaid G. and C. within ſixty days after ſuch loſs or damage happened to the ſaid two houſes as aforeſaid, or at any time ſince paid, made good, and ſatisfied to the ſaid Henry, or his aſſigns, the ſaid loſs or damage which happened by the ſaid fire to the ſaid two houſes as aforeſaid, not exceeding one hundred and twenty-five pounds each houſe, which they ought to have done, according to the form and effect of their ſaid covenant in that behalf made; and thus the ſaid G. and C. although often requeſted, have not kept their ſaid covenant with the ſaid Henry; whereby the ſaid Henry ſays that he is damnified to the value of five hundred pounds, and &c. &c.

V. LAWES.

In the Common Pleas.

LONDON, to wit. Calverly Bewick, late of London, eſquire, James Haughton Langſton, late of Weſtminſter, in the county of Middleſex, eſquire, and William Godfrey, late of the ſame, eſquire, were ſummoned to anſwer Samuel Oldham and William Cooper, aſſignees of the eſtate and effects of William Ingram, a bankrupt, according to the form of the ſtatutes concerning

Declaration by the aſſignees of a bankrupt againſt the directors of the London Sun fire office, on a policy of aſſurance on houſehold goods.

cerning bankrupts, made and provided, in a plea of covenant broken, and thereupon the ſaid Samuel and William Cooper, aſſignees as aforeſaid, by James Hore their attorney, complain, for that whereas by a certain deed poll or policy of inſurance, made, &c. (ſet out the policy), as by the ſaid deed and propoſals, relation being thereunto had more fully appears: And the ſaid Samuel and William Cooper, aſſignees as aforeſaid, aver, that the ſaid William Ingram, at the time of the making the ſaid policy of inſurance, and from thence until the loſs and damage hereafter mentioned, was intereſted in the ſaid inſured premiſes to a large amount, to wit, to the amount of all the money by him ever inſured, or cauſed to be inſured thereon, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, and that houſhold goods, utenſils, and ſtock to the ſaid amount, continued and remained in the ſaid houſe until afterwards, to wit, on the twenty-ninth day of October, in the year of Our Lord 1782, the ſame were burnt, conſumed, and deſtroyed by fire, which did not happen by any invaſion, foreign enemy, civil commotion, or any military or uſurped power whatſoever, whereby the ſaid William Ingram ſuſtained damage to a large amount, to wit, to the amount of all the money by him thereon inſured, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and the ſaid Samuel and William Cooper further ſay, that the ſaid premiſes in the ſaid deed or policy mentioned, at the time of the making of the ſaid deed, were not, nor at any time ſince have been inſured in any other office, and that the ſame premiſes in the ſaid deed or policy mentioned were and are duly deſcribed, and not otherwiſe than as they really were, or ſo as to cauſe the ſame to be inſured at a lower premium than propoſed in the table in the ſaid propoſals mentioned; and the ſaid Samuel and William Cooper, aſſignees as aforeſaid, further ſay, that the ſaid William Ingram did forthwith after the ſaid loſs, to wit, on the day and year laſt-mentioned, at London aforeſaid, in the pariſh and ward aforeſaid, gave notice thereof to the ſaid ſociety at their ſaid office, and alſo as ſoon as poſſible afterwards, to wit, on the ſame day and year laſt mentioned, did there deliver in as particular an account of his ſaid loſs and damage as the nature of the caſe would admit of, and did then and there make proof of the ſame by his oath and affidavit in writing, according to the form practiſed in the ſaid office, and by ſuch other proper vouchers as were reaſonably required: And the ſaid Samuel and William C. further ſay, that the miniſter of the pariſh of Portſea, in which the aforeſaid dwelling-houſe of the ſaid William Ingram was ſituate, long before and at the time of the loſs hereinbefore mentioned, dwelt and reſided at a diſtance from and out of the ſaid pariſh, and was and ſtill is wholly unacquainted with the character and circumſtances of the ſaid William Ingram, and wholly unable to make ſuch certificate as by the ſaid policy is required, but that the ſaid William Ingram afterwards, to wit, on the nineteenth day of May, in the year of Our Lord 1783, at London aforeſaid, in the pariſh and ward aforeſaid, did procure and did deliver at the

ſaid

ſaid office, a certificate under the hands of William Thomas Cocg, Jonathan Hammond, John Chapman, Richard Chamberlain, Thomas Cook, Francis Gibbs, William Baſſatt, Thomas Prinnatt, Thomas James, Thomas Phipard, Richard Gearing, Henry Hurloch, James Piguenit, Nicholas Dyer, Samuel Parſons, William Bacon, James Parrott, J. B. Caſtell, and Hugh Rookthen, and at the time of the ſaid loſs being reputable inhabitants of the ſaid pariſh, who were not concerned in the ſaid loſs, importing, that they knew the ſaid William Ingram, late of the Common-Hard, Portſmouth, linen-draper, and believe that he by misfortune, and without fraud, did, on the twenty-ninth day of October, then laſt paſt, ſuſtain a conſiderable loſs and damage, by his dwelling-houſe, on the Common Hard aforeſaid, and the ſtock and effects therein, or great part thereof, being conſumed by fire, of all which premiſes the ſaid Calverly, James Haughton, and William Godfrey afterwards, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, had notice from the ſaid William Ingram; and the ſaid Samuel and William Cooper ſay, that the ſaid William Ingram before he became a bankrupt, and the ſaid Samuel and William Cooper, aſſignees as aforeſaid, ſince the time the ſaid William Ingram became a bankrupt, have always been ready and willing to ſubmit all matters in difference between him and them reſpectively and the ſaid office touching the ſaid loſs, to the arbitration of arbitrators indifferently to be choſen between them; and the ſaid Samuel and William Cooper further ſay, that although the ſaid William Ingram before he became a bankrupt, and the ſaid Samuel and William Cooper, aſſignees as aforeſaid, ſince the ſaid William Ingram became a bankrupt, have reſpectively in all things conformed himſelf and themſelves to, and obſerved all and ſingular the ſtipulations, matters, and things which on his or their parts were to be obſerved and performed to the utmoſt of their power, according to the form and effect of the ſaid deed or policy, and of the ſaid propoſals; and although the ſtock and fund of the ſaid ſociety always hath been and yet is ſufficient to pay the ſaid loſs ſuſtained by the ſaid William Ingram, by reaſon of the ſaid fire, yet the ſaid William Ingram before he became a bankrupt, was not, nor have the ſaid Samuel and William Cooper, aſſignees as aforeſaid, at any time ſince the ſaid William Ingram became a bankrupt, hitherto out of the ſtock and funds of the ſaid ſociety, or in any other manner been repaid or reimburſed the ſaid loſs, or any part thereof, but the ſame and every part thereof is ſtill wholly in arrear and unpaid, contrary to the form and effect of the ſaid covenant of the ſaid Calverly, James Haughton, and William Godfrey by them in that behalf made as aforeſaid; and ſo the ſaid Samuel and William Cooper, aſſignees as aforeſaid, ſay, that the ſaid Calverly, James Haughton, and William Godfrey, although often requeſted, have not kept with the ſaid William Ingram before he became a bankrupt, nor with the ſaid Samuel and William Cooper, aſſignees as aforeſaid, ſince the ſaid William Ingram became a

bankrupt,

bankrupt, the covenant made between the ſaid William Ingram before he became a bankrupt, and the ſaid Calverly, James Haughton, and William Godfrey in that behalf as aforeſaid; but the ſaid Calverly, James Houghton, and William Godfrey have broken the ſame, and ſtill refuſe to keep the ſame with the ſaid Samuel and William Cooper, aſſignees as aforeſaid, to the damage of the ſaid Samuel and William Cooper, aſſignees as aforeſaid, of fifteen hundred pounds; therefore they bring ſuit, &c.

That goods fraudulently burned, the bankrupt had no intereſt in, the ſame inſured.

And the ſaid Calverly, James Haughton, and William Godfrey, by Oliver Farrer, their attorney, come and defend the wrong and injury, when, &c. and ſay, that the ſaid Samuel and William Cooper ought not to have or maintain their aforeſaid action thereof againſt them, becauſe they ſay, that the ſaid William Ingram in the ſaid declaration mentioned, on the ſaid twenty-ninth day of October, in the year of Our Lord 1782 aforeſaid, wilfully, fraudulently, and maliciouſly burnt, conſumed, and deſtroyed by fire the ſaid houſehold goods, utenſils, and ſtock in the ſaid declaration mentioned, and thereby wilfully, fraudulently, and maliciouſly did occaſion the ſaid loſs and damage in the ſaid declaration mentioned, to wit, at London aforeſaid, in the pariſh and ward aforeſaid; and this they are ready to verify: wherefore they pray judgment if the ſaid Samuel and William Cooper ought to have or maintain their aforeſaid action thereof againſt them: And for further plea in this behalf, the ſaid Calverly, James Haughton, and William Godfrey, by leave of the court here to them for this purpoſe firſt granted, according to the form of the ſtatute in ſuch caſe made and provided, ſay, that the ſaid Samuel and William Cooper ought not to have or maintain their ſaid action againſt them; becauſe they ſay, that the ſaid William Ingram in the ſaid declaration mentioned, at the time of the ſaid ſuppoſed loſs and damage therein mentioned, had not any intereſt in the ſaid houſehold goods, utenſils, and ſtock above ſuppoſed to have been burnt, conſumed, and deſtroyed by fire, as the ſaid Samuel and William Cooper have in their ſaid declaration in that behalf above alledged; and of this the ſaid Calverly, James Haughton, and William Godfrey put themſelves upon the country, &c.

G. Rooke.

Replication that the ſaid goods were not burnt by the bankrupt.

And the ſaid Samuel and William Cooper, as to the ſaid plea of the ſaid Calverly, James Haughton, and William Godfrey, by them firſt above pleaded in bar, ſay, that by reaſon of any thing in that plea contained, they ought not to be barred from having their ſaid action thereof maintained againſt the ſaid Calverly, James Haughton, and William Godfrey; becauſe they ſay, that the ſaid William Ingram did not wilfully, fraudulently, or maliciouſly burn, conſume, or deſtroy by fire, or cauſe to be burnt, conſumed, or deſtroyed by fire the ſaid houſehold goods, utenſils, and ſtock in the ſaid declaration mentioned, or any part thereof, in manner and form as the ſaid Calverly, James Haughton, and

William

Willihm Godfrey have in their ſaid plea above alledged; and this they pray may be enquired of by the country: And as to the plea of the ſaid Calverly, James Haughton, and William Godfrey, by them laſtly above pleaded in bar, and whereof the ſaid Calverly, James Haughton, and William Godfrey have put themſelves upon the country, they the ſaid Samuel and William Cooper do ſo likewiſe; therefore, to try the ſaid iſſues it is commanded to the ſheriffs that they cauſe to come here on , twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe, as well, &c. the ſame day is given to to the parties aforeſaid there, &c.

It is not alledged in the declaration that a certificate was procured, and the court of C. B. decided this was a *condition precedent*, and where no intereſt is already veſted, nor is to veſt but on a condition precedent, performance ought to be averred fully, and with certainty, Co. 10, 11. Ughtred's Caſe. It was anſwered to the objection in arreſt of judgment, that the objection is waved by defence, and that matter may be ſupplied by intendment, 1. Salk. 364. Sir T. Raymond 487 2. Jones 232. 2. Stra. 295. *In quare impedit* plaintiff had not averred that the next term belonged to him, Cro. Jac. 369. nor ſaid how ſeiſed in fee in arreſt or judgment, becauſe breach not well alledged; court held breach admitted by plea *non eſt factum*. See 2. H. Bl. 577. n. a. See *ante* 403. ſame point; and 6 [illegible] 710.

On Indentures of Apprenticeship *.

DORSETSHIRE, ſſ. Bernard Banger, by William Banger his father, who is admitted by the court of our lord the king himſelf to proſecute for the ſaid Bernard, who is within the age of twenty-one years, as the next friend of the ſaid Bernard, complains of Richard Barfoot, being in the cuſtody, &c. of a plea of breach of covenant; for that whereas, by a certain indenture made on, &c. between the aforeſaid William Bangor and Bernard Bangor, by the names of, &c. of the one part, and the ſaid Richard, by the name of, &c. on the other part (the counterpart of the ſaid indenture, ſealed with the ſeal of the ſaid defendant, he the ſaid Bernard Banger now brings here into court, the date whereof is the ſame day and year aforeſaid), it was witneſſed that the ſaid B. B. at his own free and voluntary will, and by and with the conſent of his father, placed and bound himſelf apprentice for four years, as by the ſaid indenture now brought here into court more fully and at large appears; and the ſaid B. avers, that the ſaid B. by virtue of and under the ſaid indenture, did, after the making the ſaid indenture of the twenty-ſixth day of May, A. D. 1752 aforeſaid, enter and was received by the ſaid defendant into the ſervice of the ſaid defendant, as ſuch his apprentice in form aforeſaid, and into the houſe of the ſaid defendant, and did ſtay and continue in the ſervice of the ſaid defendant, as ſuch his apprentice in manner aforeſaid, from thence for part of the aforeſaid term of four years, to wit, until and upon the twenty-ſeventh day

Declaration an appr indenture brought apprenti gainſt hi ter, for ſing him ſervice the will apprenti inſtruct in his not ſuf in cl Plain fam

* See Covenant on Articles of Agreement, and *ante* p. 392.

of

of March, A. D. 1756: And the ſaid plaintiff further ſaith, that although he the ſaid plaintiff hath always, from the time of the making of the ſaid indenture hitherto well and faithfully done, performed, and fulfilled every thing in the ſaid indenture contained on his part and behalf to be performed and fulfilled; yet proteſting that the ſaid Richard hath not done, performed, or fulfilled all things in the ſaid indenture on his part and behalf to be done and performed; in fact the ſaid plaintiff ſaith, that the ſaid Richard, during the ſaid term of four years in the ſaid indenture mentioned, to wit, on the twenty-ſeventh day of March, A. D. 1756 aforeſaid, at L. aforeſaid, without the licence, and againſt the will of the ſaid plaintiff, diſmiſſed and put away the ſaid plaintiff from and out of the ſaid ſervice of the ſaid defendant, and from thence until the end of the ſaid term of four years, wholly refuſed to permit him to be in the ſaid ſervice of the ſaid defendant, againſt the form and effect of the ſaid indenture, and of the aforeſaid covenant of the ſaid Richard made in that behalf as aforeſaid: And the ſaid plaintiff further ſays, that the ſaid Richard, during all or any part of the ſaid term of four years, did not teach and inſtruct, or cauſe to be well and ſufficiently taught and inſtructed, the ſaid plaintiff in the ſaid trade and buſineſs of a ſoap-boiler and tallow-chandler, after the beſt way and manner that he could, according to the form and effect of the ſaid indenture, but therein wholly failed and made default, contrary to the form and effect of the aforeſaid indenture of the aforeſaid covenant of the aforeſaid defendant, ſo made in that behalf as aforeſaid: And the ſaid plaintiff further ſays, that the ſaid Richard did not, during great part of the ſaid four years, from and continually after the ſaid twenty-ſeventh day of March, in the A. D. 1750 aforeſaid, until the end of the ſaid term of four years, or during any part of that time, find or provide for the ſaid plaintiff ſufficient, or any meat, drink, waſhing, or lodging, but during all that time refuſed ſo to do, contrary to the form and effect of the ſaid indenture of his ſaid covenant ſo made in that behalf as aforeſaid; and ſo the ſaid plaintiff ſaith, that the ſaid defendant (although, &c.) hath not kept with plaintiff his covenants aforeſaid. Damages ten pounds.

1 Count.

2 Count.

That he voluntarily abſented himſelf.

And the ſaid Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the firſt breach of covenant above aſſigned, ſays, that the ſaid Bernard ought not to have or maintain his aforeſaid action thereof againſt him; becauſe he ſays, that the ſaid B. on the ſaid twenty-ſeventh day of March, A. D. 1756 aforeſaid, in the aforeſaid breach above aſſigned mentioned, at Lillington aforeſaid, voluntarily, and of his own free will did depart and abſent himſelf from the ſervice of the ſaid defendant, and voluntarily of his like own free will continued abſent from the ſervice of the ſaid defendant, from thence until the end and term of four years, without this, that the ſaid Richard, without the licence and againſt the will of the ſaid plaintiff, diſmiſſed and put away the ſaid plaintiff from and out of the ſaid ſervice of the ſaid defendant, as the ſaid plain-

tiff hath above in his said deed in that behalf alledged; and this he is ready to verify: wherefore he prays judgment if the said B. ought to have or maintain his aforesaid action thereof against him, &c.: And the said Richard, as to the said breach of covenant secondly above assigned, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that the said defendant did, from the time of the making of the said indenture, until the twenty-seventh day of March 175ⁿ, at Lillington aforesaid, teach and instruct, and cause to be well and sufficiently taught and instructed, the said plaintiff in the said trade and business of a soap-boiler and tallow-chandler, after the best way and manner that he could, and that he the said plaintiff, on the twenty-seventh day of March, A. D. 1756 aforesaid, of his own free will and accord, at Lillington aforesaid, went away, departed, and absented himself from the house and service of him the said defendant, and voluntarily, of his own free will, kept and continued to absent himself from the service of the said defendant (a), from thence until the end of the said term of four years; and this he is also ready to verify: wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.: And as to the said breach of covenant thirdly above assigned, *(actio non)*; because he says, that the said plaintiff, on the said twenty-seventh day of March, A. D. 1756 aforesaid, did voluntarily, and of his own free will, depart and absent himself from the service of the said defendant, and did freely and voluntarily continue to absent himself from the service of the said defendant for the residue of the said term of four years, and therefore the said defendant could not at any time after the said twenty seventh day of March, A. D. 175⁶ aforesaid, during the said term of four years, find or provide for the said plaintiff any meat, drink, washing, or lodging; and this, &c.; wherefore, &c. if, &c. 2d Plea.

(a) This I think should be inserted, not having been guilty of [illegible] Mr. Warren left it out; but the [illegible] defendant refused to receive him. J. MORGAN.
be reckoned by the [illegible]
which was, The apprentice [illegible]

MIDDLESEX, to wit. Jane Goadley complains of Robert Hall, being, &c. of a plea of breach of covenant; for that whereas by certain indentures of apprenticeship made on the twelfth day of September, A. D. 1783, to wit, at Westminster, in the county of Middlesex aforesaid (one part of which indenture, sealed with the seal of the said Robert, she the said Jane now brings here into court, the date whereof is the day and year aforesaid), it is witnessed (amongst other things) that Mary Hall, daughter of the said Robert (by the name and addition of Robert Hall, of the parish of Islington, Middlesex), did put herself apprentice to the said Jane (by the name and addition of Jane Goadley, of the city of Bath, Somersetshire), to learn her art, also to assist in the family business, such as washing, ironing, &c. and with her Covenant on an indenture of apprenticeship against the father, for non-performance of the daughter's covenant.

(after the manner of an apprentice) to ſerve from the date thereof unto the full end and term of ſeven years from thence next following, to be fully complete and ended, during which term the ſaid apprentice her miſtreſs faithfully ſhould ſerve, her ſecrets keep, her lawful commands every where gladly do; that ſhe ſhould not haunt taverns or playhouſes, nor abſent herſelf from her ſaid miſtreſs's ſervice day or night unlawfully, but in all things as a faithful apprentice ſhould behave herſelf towards her ſaid miſtreſs, and all hers, during the ſaid term; and for the true performance of all and every the ſaid covenants and agreements, either of the ſaid parties did become bound unto the other by the ſaid indenture, as by the ſaid indenture (relation being thereunto had) will (amongſt other things) more fully and at large appear; by virtue of which ſaid indenture the ſaid Mary Hall afterwards, to wit on the ſaid twelfth day of September, in the year aforeſaid, at Weſtminſter, in the county of Middleſex aforeſaid, entered, and was then and there received into the ſervice of the ſaid Jane as her apprentice, and remained and continued in ſuch ſervice, under and by virtue of the ſaid indenture, for a long ſpace of time, to wit, from the day and year laſt aforeſaid, until upon the day of , in the year of Our Lord 17 , to wit, at Weſtminſter, in the county of Middleſex aforeſaid; and although ſhe the ſaid Jane hath always, from the time of the making the ſaid indenture hitherto, well and truly performed, fulfilled, and kept the ſame in all things therein mentioned and contained on her part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the ſaid indenture, to wit, at Weſtminſter, in the county of Middleſex aforeſaid: Yet, proteſting that the ſaid Robert hath not performed, fulfilled, or kept any thing in the ſaid indenture mentioned and contained on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning thereof; the ſaid Jane in fact ſaith, that the ſaid Mary Hall did not nor would faithfully ſerve the ſaid Jane, according to the tenor and effect, true intent and meaning of the ſaid indenture; but on the contrary thereof, ſhe the ſaid Mary Hall did, during the ſaid term, to wit, on the ſaid day of , in the year laſt aforeſaid, at Weſtminſter, in the county of Middleſex aforeſaid, unlawfully abſent herſelf, and hath from thence hitherto remained and continued unlawfully abſent from the ſervice of the ſaid Jane, contrary to the tenor and effect of the ſaid indenture, and of the covenants in that behalf made as aforeſaid: And ſo the ſaid Jane in fact ſaith, that the ſaid Robert (although often requeſted), hath not kept the ſaid covenants ſo by him made with the ſaid Jane, in manner and form aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Jane hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to the damage of the ſaid Jane of pounds; and therefore ſhe brings her ſuit, &c. Pledges, &c.

Drawn by MR. TIDD.

Vide Branch *v.* Emington, Doug. 500. and Whitby *v.* Loftus, B. R. M. 25 G. 1. 8. Mod. 190.

Trinity Term, 30. Geo. 3.

LANCASHIRE, to wit. Barton Shuttleworth, clerk, complains of James Hargreaves, being, &c. of a plea of covenant broken; for that whereas by certain articles of agreement indented, made, concluded, and agreed upon the fixteenth day of October, in the year of Our Lord 1789, at Rochdale, in the county of Lancaſter aforeſaid, between the ſaid B. S. the now plaintiff, and B. S. his ſon, of the one part, and the ſaid J. H. of the other part, and ſealed with the reſpective ſeals of the ſaid B. S. the now plaintiff, and B. S. the ſon, and the ſaid James, and bearing date the ſame day and year aforeſaid (which ſaid articles of agreement now remain in the cuſtody and poſſeſſion of the ſaid James, and therefore the ſaid B. S. the now plaintiff, cannot bring the ſame here into court), the ſaid B. S. the ſon, of his own free will, and with the conſent of the ſaid B. S. his father, the now plaintiff, did put, place, and bind himſelf apprentice to the ſaid J. H. to ſerve him in his art, myſtery, or buſineſs of a ſurgeon, apothecary, and midwife, from the day of the date of the ſaid articles, for and during the full end and term of four years from thence next enſuing, and that he the ſaid B. S. the ſon, ſhould and would, during the ſaid term, keep the ſecrets of his ſaid maſter, and ſhould not, nor would not, during the ſaid term, embezzle or miſſpend any of his ſaid maſter's money or goods, nor abſent himſelf from his ſervice at any time without his conſent, but in all reſpects behave himſelf as a good and faithful apprentice ought to do; and the ſaid J. H. in conſideration of ſuch apprenticeſhip, and alſo in conſideration of fifty-two pounds ten ſhillings of lawful money of Great Britain to him in hand paid, by the ſaid B. S. the father, on or before the ſealing and delivery of the ſaid articles, the receipt whereof he did thereby acknowledge, did for himſelf, his heirs, executors, and adminiſtrators, that he the ſaid J. H. ſhould and would, at all times during the term aforeſaid, teach and inſtruct, or cauſe and procure to be taught and inſtructed in the art, myſtery, or buſineſs of a ſurgeon, apothecary, and midwife, and in all things incident and belonging thereto, in ſuch manner as he the ſaid J. H. then, or at any time during the ſaid term, ſhould uſe, practiſe, or deal in the ſame; and alſo that he the ſaid J. H. ſhould and would, during the ſaid term, find and provide for the ſaid B. S. the ſon, good and ſufficient meat, drink, and lodging, as for ſuch an apprentice (as by the ſaid articles of agreement, relation being thereunto had, may more fully appear): And the ſaid B. S. the father, in fact ſays, that the ſaid B. S. the ſon, by virtue of the ſaid articles, afterwards, to wit, on the ſeventeenth day of October, in the year aforeſaid, at R. aforeſaid, in the county aforeſaid, entered and was received into the ſervice of the ſaid James, to ſerve him the ſaid James as ſuch apprentice as aforeſaid, during the ſaid term of four years, in the ſaid articles mentioned, and ſaid and continued in the ſaid ſervice of the ſaid James, as ſuch apprentice as aforeſaid, for and during part of the ſaid term in the ſaid indenture mentioned, to wit, until and upon the firſt day of April, in the

Declaration in B R. in covenant on an indenture of apprenticeſhip, by the father of the apprentice against his maſter, for not teaching him the buſineſs, and diſmiſſing him.

States that the indenture of apprentice is in defendant's cuſtody, therefore plaintiff cannot produce it in court.

The ſon entered into defendant's ſervice.

1ſt Breach, did not inſtruct the apprentice.

year of Our Lord 1790, to wit, at, R. aforeſaid: Yet the ſaid James did not, during the ſaid time that the ſaid B. S. the ſon, ſo was and continued in his ſaid ſervice as ſuch apprentice as aforeſaid, teach or inſtruct the ſaid B. S. the ſon, or cauſe or procure him to be taught or inſtructed in the art, myſtery, or buſineſs of a ſurgeon, apothecary, and midwife, or either of them, or in all or any of the things incident or belonging thereto, in ſuch manner as he the ſaid James did, during the ſame time uſe, practiſe, and deal in the ſame, or in any other manner whatſoever; but wholly omitted and refuſed ſo to do, and therein wholly failed and made default, contrary to the form and effect of the ſaid articles, &c. of the ſaid covenant of the ſaid James, ſo by him made in that behalf as aforeſaid, and in manifeſt breach thereof: And the ſaid B. S. the father, further in fact ſays, that although the ſaid B. S. the ſon, hath always, during the ſaid term, been deſirous of remaining and continuing in the ſaid ſervice of the ſaid James, as ſuch apprentice as aforeſaid, for and during, and until the end and expiration of the ſaid term of four years in the ſaid articles mentioned,

2d Breach, turned the apprentice away, and did not inſtruct or provide him with meat and lodging.

to wit, at R. aforeſaid: Yet the ſaid James afterwards, and long before the expiration of the ſaid term of four years in the ſaid articles mentioned, to wit, on the ſaid firſt day of April, in the year laſt aforeſaid, at R. aforeſaid, without the licence or conſent, and againſt the will of the ſaid B. S. the ſon, diſcharged and diſmiſſed the ſaid B. S. the ſon from and out of the ſervice of him the ſaid James, and kept and continued him ſo diſmiſſed and diſcharged out of his ſaid ſervice from thence hitherto, and during all that time wholly refuſed to permit or ſuffer the ſaid B. S. the ſon, to remain, continue, or be in his ſervice as ſuch apprentice as aforeſaid, and hath not, during any part of the ſaid laſt-mentioned time, taught or inſtructed the ſaid B. S. the ſon, or cauſed and procured him to be taught and inſtructed in the ſaid art, myſtery, and buſineſs of a ſurgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, in manner as he the ſaid James uſes, practiſes, and deals in the ſame, or in any other manner; neither hath the ſaid James, during any part of the ſaid laſt-mentioned time, found or provided for the ſaid B. S. the ſon, good and ſufficient meat, drink, and lodging, fit for ſuch an apprentice, or any other meat, drink, or lodging, or any part thereof, but hath altogether omitted and refuſed ſo to do, and hath therein wholly failed and made default, contrary to the form and effect of the ſaid articles of

Condition.

the ſaid James ſo by him made in that behalf as aforeſaid, and in manifeſt breach thereof; and ſo the ſaid B. S. the father ſays, that the ſaid James (although often thereto requeſted), hath not kept with him the ſaid B. S. the father, the aforeſaid covenant made with him the ſaid James as aforeſaid, but hath broken the ſame; and to keep the ſame with the ſaid B. S. the father, the ſaid James hath hitherto altogether refuſed, and ſtill refuſes, to the damage of the ſaid B. S. the father, of one hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c.

And

And the ſaid James, by Ralph Allen his attorney, comes and defends the wrong and injury, when, &c.; and as to the breach of covenant firſt above aſſigned, ſays, that the ſaid B. S. the father ought not to have or maintain his aforeſaid action thereof againſt him the ſaid James, becauſe he the ſaid James ſaith, that he the ſaid James did, during the ſaid time that he the ſaid B. S. the ſon was, and continued in his ſaid ſervice as ſuch an apprentice as aforeſaid, teach and inſtruct the ſaid B. S. the ſon, and cauſe and procure him to be taught and inſtructed in the art, myſtery, or buſineſs of a ſurgeon, apothecary, and midwife, and each of them, and in all things incident and belonging thereto, in ſuch manner as he the ſaid James did during that time uſe, practiſe, and deal in the ſame, according to the form and effect of the ſaid articles, and of the ſaid covenant of the ſaid James ſo by him made in that behalf as aforeſaid, to wit, at R. aforeſaid; and of this he the ſaid James puts himſelf upon the country, and the ſaid B. S. the now plaintiff doth the like. And as to ſo much of the breach of the covenant ſecondly aforeſaid, as relates to the diſmiſſing and diſcharging the ſaid B. S. the ſon from and out of the ſervice of the ſaid James, and keeping and continuing him ſo diſmiſſed and diſcharged for the time in the ſaid breach in that behalf mentioned, and refuſing to permit or ſuffer the ſaid B. S. the ſon to remain, continue, or be in the ſervice of the ſaid James as ſuch apprentice as aforeſaid, during the time in the ſaid breach in that behalf aforeſaid; the ſaid James ſaith, that the ſaid B. S. the father ought not to have or maintain his aforeſaid action thereof againſt him the ſaid James, becauſe he the ſaid James ſaith, that he did not diſmiſs or diſcharge the ſaid B. S. the ſon from or out of the ſervice of the ſaid James, or refuſe to permit or ſuffer the ſaid B. S. the ſon to remain, continue, or be in the ſervice of the ſaid James as ſuch apprentice as aforeſaid, in manner and form as the ſaid B. S. the father hath in his ſaid breach ſecondly above aſſigned alledged, and of this he the ſaid James puts himſelf upon the country, and the ſaid B. S. the now plaintiff doth the like. And as to the reſidue of the ſaid breach of covenant ſecondly above aſſigned, the ſaid James ſays, that the ſaid B. S. the father ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſaith, that the ſaid B. S. the ſon, on the firſt day of April, in the year of Our Lord 1770, at R. aforeſaid in the ſaid county, without the leave, and againſt the will of the ſaid James, voluntarily and wilfully departed and abſented himſelf from his ſaid ſervice, and remained and continued abſent therefrom without the leave and againſt the will of the ſaid James, from thence continually hitherto, contrary to the form and effect of the ſaid indenture, by reaſon whereof the ſaid James could not, during that time, or any part thereof, teach or inſtruct the ſaid B. S. the ſon, or cauſe or procure him to be taught or inſtructed in the art, myſtery, and buſineſs of a ſurgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, in manner as he the ſaid

Plea 1ſt, as to the firſt breach, that he did teach him, and iſſue.

Second, to the charge for diſmiſſing him in a manner, that he did not, and iſſue.

As to the reſidue of that breach, that he ran away, and concluding with a verification.

James uſed, practiſed, and dealt in the ſame, or in any other manner, or find or provide for the ſaid B. S. the ſon, meat, drink, or lodging, or any part thereof; and this he the ſaid James is ready to verify: wherefore he prays judgment if the ſaid B. S. the father ought to have or maintain his ſaid action thereof againſt him: And for further plea in this behalf as to the ſaid breach of covenant ſecondly above aſſigned, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, the ſaid James ſays, that the ſaid B. S. the father ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that after the making of the ſaid articles, and before the diſmiſſing and diſcharging of the ſaid B. S. the ſon from and out of the ſervice of him the ſaid James, to wit, on the firſt day of April, in the year of Our Lord 1790, at R. aforeſaid, in the ſaid county, it was agreed by and between the ſaid B. S. the father and the ſaid James (amongſt other things) in manner following, that is to ſay, that the ſaid James ſhould, with all convenient ſpeed, procure another perſon to ſerve him in his ſaid art, myſtery, and buſineſs, and that when the ſaid James ſhould have procured ſuch perſon, the ſaid B. S. the ſon ſhould leave the ſervice of him the ſaid James, and be diſcharged from his ſaid apprenticeſhip; and that he the ſaid James ſhould not, after the procuring of ſuch perſon, be obliged to teach or inſtruct the ſaid B. S. the ſon, or cauſe and procure him to be taught and inſtructed in the ſaid art, myſtery, and buſineſs of a ſurgeon, apothecary, and midwife, or any part thereof, or in any thing incident or belonging thereto, or to find or provide for the ſaid B. S. the ſon, any meat, drink, or lodging, and that the ſaid B. S. the father ſhould not nor would bring any action againſt the ſaid James for omitting and refuſing ſo to do: and the ſaid James avers, that the ſaid agreement being ſo made as aforeſaid, he the ſaid J. in conſideration and purſuance thereof afterwards, to wit, on the day and year laſt aforeſaid, at R. aforeſaid, in the ſaid county, did procure another perſon to ſerve him in art, myſtery, and buſineſs; wherefore the ſaid James then and there diſmiſſed and diſcharged the ſaid B. S. the ſon from and out of the ſervice of him the ſaid J. and kept and continued him ſo diſmiſſed and diſcharged out of his ſaid ſervice, from thence hitherto, and during all that time wholly refuſed to permit the ſaid B. S. the ſon to remain, continue, or be in his ſervice, as ſuch apprentice as aforeſaid, and did not, during any part of the ſaid laſt-mentioned time, inſtruct the ſaid B. S. the ſon, or cauſe or procure him to be taught or inſtructed in the ſaid art, myſtery, or buſineſs of a ſurgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, nor find nor provide for the ſaid B. S. the ſon, any meat, drink, or lodging, or any part thereof, but wholly omitted and refuſed ſo to do, as it was lawful for him to do on that occaſion; and this he is ready to verify: wherefore he prays judgment if the ſaid B. S. the father ought to have or maintain

Plea to 2d breach, that plaintiff and defendant agreed that the latter ſhould procure another aſſiſtant, plaintiff's ſon ſhould leave defendant.

tain his said action against him: And for further plea in this behalf as to the said breach of covenant secondly above assigned, by leave of the court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, the said J. says, that the said B. S. the father ought not to have or maintain his aforesaid action against him the said James, because he says, that after the making of the said articles, and before the dismissing and discharging the said B. S. the son from and out of the service of him the said James, to wit, on the first day of January, in the year of Our Lord 1790, and on divers other days and times between that day and the dismissing and discharging the said B. S. the son from and out of the service of him the said James, to wit, at R. aforesaid, in the said county, the said B. S. the son misbehaved himself as such apprentice as aforesaid, and then and there wholly refused to obey the lawful commands and orders of him the said James, and then and there beat, bruised, wounded, and ill-treated the said James, so that his life was thereby then and there in great danger, and then and there behaved and conducted himself so improperly, riotously, and outrageously, that he the said James could not keep the said B. S. the son as such apprentice as aforesaid; wherefore the said James, on the first day of April, in the year of Our Lord 1790, at R. aforesaid, in the said county, dismissed and discharged the said B. S. from and out of the service of him the said J. and kept and continued him so dismissed and discharged out of his said service from thence hitherto and during all that time, wholly refused to permit or suffer the said B. S. the son to remain, continue, or be in his service as such apprentice as aforesaid, and did not, during any part of the said last-mentioned time, teach or instruct the said B. S. the son, or cause or procure him to be taught and instructed in the said art, mystery, and business of a surgeon, apothecary, and midwife, or any part thereof, or in all or any of the things incident or belonging thereto, nor find or procure for the said B. S. the son any meat, drink, or lodging, or any part thereof, but wholly omitted and refused so to do, as it was lawful for him to do on that occasion; and this he is ready to verify: wherefore he prays judgment if the said B. S. ought to have or maintain his aforesaid action against him. SAMUEL HEYWOOD.

Another plea to second breach, that the apprentice misbehaved himself to his said master, as that defendant could not keep him.

And the said B. S. the now plaintiff, as to the said plea of the said James by him above pleaded in bar as to the said residue of the said breach of covenant secondly above assigned, says, that he the said B. ought not, by reason of any thing in that plea alledged, to be precluded from having and maintaining his aforesaid action thereof against the said James, because he says, that the said James, of his own wrong, and without any such cause as is by him in the said plea in that behalf alledged, omitted and refused to teach or instruct the said B. S. the son, or to cause or procure him to be taught or instructed in the said art, mystery, or business of a surgeon, apothecary, or midwife, or any part thereof, or in all or

Replication de injuria to the third plea, and issue.

any of the things incident or belonging thereto, in manner as he the ſaid James then uſed, practiſed, and dealt in the ſame, or in any other manner, and to find or provide for the ſaid B. S. the ſon, meat, drink, or lodging, or any part thereof, in manner and form as the ſaid B. S. the plaintiff hath above thereof complained againſt him the ſaid James; and this he the ſaid B. S. the plaintiff prays may be enquired of by the country, and the ſaid James doth the like: And the ſaid B. S. the plaintiff, as to the ſaid plea of the ſaid James by him ſecondly above pleaded in bar, as to the ſaid breach of covenant ſecondly above aſſigned, ſays, that the ſaid B. S. ought not, by reaſon of any thing in that plea mentioned, to be barred from having and maintaining his ſaid action thereof againſt the ſaid James, becauſe he ſays, that it was not agreed by and between the ſaid B. S. the father and the ſaid James, in manner and form as the ſaid James hath above in his ſaid laſt-mentioned plea in that behalf alledged; and this he the ſaid B. S. the plaintiff prays may be enquired of by the country; and the ſaid James doth the like: And the ſaid B. S. the plaintiff, as to the ſaid plea of the ſaid James laſtly above pleaded in bar to the ſaid breach of covenant ſecondly above aſſigned, ſays, that the ſaid B. ought not, by reaſon of any thing in that plea alledged, to be barred from having and maintaining his aforeſaid action againſt him the ſaid James, becauſe he ſays, that the ſaid James, of his own wrong, and without any ſuch cauſe as is by him in his ſaid laſt-mentioned plea in that behalf alledged, diſmiſſed, and diſcharged the ſaid B. S. the ſon from and out of the ſervice of the ſaid James, and kept and continued him ſo diſmiſſed and diſcharged out of the ſervice of him the ſaid James from thence hitherto and during all that time, wholly refuſed to permit or ſuffer the ſaid B. S. the ſon to remain, continue, or be in his ſervice as ſuch apprentice as aforeſaid, and did not during any part of that time, teach or inſtruct the ſaid B. S. the ſon, or cauſe or procure him to be taught or inſtructed in the ſaid art, myſtery, or buſineſs of ſurgeon, apothecary, or midwife, or any part thereof, or in any of the things incident belonging thereto, nor find or provide for the ſaid B. S. the ſon, any meat, drink, or lodging, or any part thereof, but wholly omitted and refuſed ſo to do, in manner and form as the ſaid B. S. the plaintiff hath above thereof complained againſt him the ſaid James; and this he the ſaid B. S. prays may be enquired of by the country; and the ſaid James doth the like. T. BARROW.

Replication to 4th plea, during the agreement, and iſſue.

Replication to 5th plea, *de injuria*, and iſſue.

I have taken iſſue on each of the defendant's pleas, but I am of opinion that the laſt, though true in fact, is bad in point of law; for I do not think that the expreſs covenant of the defendant, to inſtruct the apprentice in his profeſſion, and to find him with board and lodging during the term, can be diſcharged by the mere miſbehaviour of the latter to the former, as ſtated in that plea; however, it would have been nugatory to have demurred to it, as the defendant might have gone to trial upon the good pleas without it or with it, by amending, but it is proper to obſerve, that if the defendant's evidence at the trial goes only to ſupport the faulty plea, I think it bad in arreſt of judgment, though he ſhould obtain a verdict upon it.

CITY

CITY OF BRISTOL, *ff.* William Organ, late of the city of Briſtol, fiſhmonger and cork-cutter, was ſummoned to anſwer John Bayley of a plea of covenant broken; and thereupon the ſaid J. B. by J. C. who is admitted by the court to proſecute for the ſaid J. B. who is within the age of twenty-one years, as the next friend of the ſaid J. B. complains: for that whereas on the ſeventh of October 1775, at the city of Briſtol, by a certain indenture, &c. &c. as by the ſaid indenture, relation being had thereto, more fully and at large appears: And the ſaid J. B. ſays, that after making the ſaid indenture, to wit, on the day and year aforeſaid, at the city of B. aforeſaid, he the ſaid J. B. entered into the ſervice of the ſaid William and Ann, to ſerve after the manner of an apprentice, according to the form and effect of the ſaid indenture; and although the ſaid J. B. always, from the time of making the ſaid indenture, hitherto hath kept, performed, and done all things in the ſaid indenture contained on his part and behalf to be done, performed, and kept; yet, proteſting that the ſaid William hath not done any thing in the ſaid indenture contained on his part and behalf to be done and performed: In fact the ſaid J. B. ſaith, that the ſaid W. hath not, ſince the day of the date of the ſaid indenture, diligently taught, inſtructed, and informed the ſaid J. B. or cauſed him to be informed by others in the aforeſaid art of a fiſhmonger, and the aforeſaid art of a cork-cutter, or either of them, but hath wholly neglected and refuſed ſo to do, contrary to the form and effect of the ſaid indenture, and of the covenant of the ſaid William in that behalf made as aforeſaid: And the ſaid J. B. further ſaith, that the ſaid William hath not, ſince the time of making the ſaid indenture, found him the ſaid J. B. good and ſufficient meat, drink, lodging, and other neceſſaries (apparel and waſhing excepted) or any of them, but hath wholly neglected and refuſed ſo to do, contrary to the form and effect of the ſaid indenture, and of the covenant of the ſaid William in that behalf made as aforeſaid; and ſo the ſaid J. B. ſays, that the ſaid William (although often requeſted) hath not kept with the ſaid J. B. his covenant in manner aforeſaid made, but hath broken the ſame, and to keep the ſame with the ſaid J. B. hath hitherto wholly refuſed, to the damage; and therefore, &c.

Declaration by an infant apprentice againſt his maſter, for not inſtructing him in his trade, and providing him with meat, drink, &c.

And the defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to the ſaid breach of covenant firſt above aſſigned, ſays, that the ſaid J. B. the plaintiff, (*actio non*); but he ſaith, that the ſaid William hath, ſince the day of the date of the ſaid indenture, diligently taught, inſtructed, and informed the ſaid J. B. the plaintiff, in the aforeſaid art of a fiſhmonger, and in the aforeſaid art of a cork-cutter, according to the form and effect of the ſaid indenture, and of the covenant of the ſaid William in that behalf made as aforeſaid; and of this, &c. defendant, for further plea in bar as to the ſaid breach of covenant

Plea 1ſt, that defendant taught plaintiff according to the agreement.

Second, that plaintiff abſented himſelf from defendant's ſervice, and that whilſt he remained in his ſervice, defendant taught and inſtructed him

firſt

firſt above aſſigned, by leave, &c.; but he ſays, that after the making of the aforeſaid indenture, to wit, on the ſeventh of October 1775, the ſaid J. B. the plaintiff, entered into the ſervice and employment of the ſaid William in the aforeſaid arts of a fiſhmonger and cork-cutter, and attended the ſaid William for inſtruction therein for a long ſpace of time, to wit, for the ſpace of then following; and that afterwards, on A. D. and from thenceforth until the day of ſuing out the original writ of the ſaid J. B. the plaintiff at B. aforeſaid, he the ſaid J. B. the plaintiff abſented himſelf from the ſervice and employment aforeſaid of the aforeſaid William, and neglected to attend the ſaid William in the arts aforeſaid: And the ſaid William further ſays, that from the time when the ſaid J. B. the plaintiff, firſt entered into the ſervice and employment of the ſaid William in the arts above-mentioned, until the time of his abſenting himſelf therefrom, and neglecting to attend the ſaid William therein as aforeſaid, he the ſaid William did † teach, inſtruct, and inform the ſaid J. B. the plaintiff, in the aforeſaid art of a fiſhmonger, and in the aforeſaid art of a cork cutter, according to the form and effect of the ſaid indenture of the covenant of the ſaid William in that behalf made as aforeſaid verification; wherefore he prays judgment if, &c.; and defendant, as to the ſaid breach of covenant laſtly above aſſigned, ſays, &c. but he ſays, that the ſaid William did find the ſaid J. B. the plaintiff, good and ſufficient meat, drink, lodging, and other neceſſaries, according to the form and effect of the ſaid indenture, and of the covenant of the ſaid William in that behalf made as aforeſaid; and of this, &c.: and for further plea in bar as to the ſaid breach of covenant laſtly above aſſigned, by leave, &c. [the ſame as firſt part of ſecond plea to this †], find him the ſaid J. B. the plaintiff, &c. the ſame as the third plea,

3d, that defendant did find plaintiff meat and drink.

4th, that plaintiff abſented himſelf from defendant's ſervice, and that defendant, while, &c. did find, &c.

These are, I think, the beſt pleas which the caſe will admit of; but I am inclined to think that the plaintiff will obtain a verdict for ſome ſmall damages.

This is a moſt abominable action, but I fear the plaintiff muſt have a verdict on all the pleas, becauſe the defendant has not taught plaintiff, as alledged in firſt and third pleas, nor did the plaintiff abſent himſelf, as alledged in third and fourth pleas; therefore I think it adviſable either to offer terms of accommodation, or ſuffer judgment by default, rather than incur the coſts of the ſpecial pleas, and a trial thereon. NASH GROSE.

Replication, &c. to two pleas, proteſting that defendant did not keep, &c.

Plaintiff avers that he did not abſent himſelf, &c.

And the ſaid John the plaintiff, as to the ſaid plea of the ſaid William by him ſecondly above pleaded in bar, ſays, *(preclusi non)*, but proteſting that the ſaid William did teach, inſtruct, or inform the ſaid J. B. the plaintiff, in the aforeſaid art of a fiſhmonger, and in the aforeſaid art of a cork-cutter, in manner and form as in and by the ſaid ſecond plea is above alledged; nevertheleſs, for replication in this behalf the ſaid S. the plaintiff ſays, that he the ſaid John the plaintiff did not abſent himſelf from the ſervice and employment aforeſaid of the ſaid William, or neglect to attend the ſaid William in arts aforeſaid, in manner and form as

as the ſaid William hath in and by that plea above alledged; and this the ſaid John prays, &c.: And as to the ſaid plea of the ſaid William by him laſtly above pleaded in bar, the ſaid John the plaintiff ſays, *(actio non)*; but proteſting that he the ſaid William did not find him the ſaid John the plaintiff, good and ſufficient meat, drink, lodging, and other neceſſaries, in manner and form as in and by the ſaid laſt plea in that behalf is above ſuppoſed; nevertheleſs, for replication in this behalf the ſaid John the plaintiff ſays, that he the ſaid John the plaintiff did not abſent himſelf from the ſervice and employment of the ſaid William, in manner and form as the ſaid William hath in and by that plea above alledged; and this, &c. THO. WALKER.

To plea, proteſting that plaintiff did not find ſufficient meat and drink.

Plaintiff avers that he did not abſent himſelf.

And the ſaid William, as to the ſaid plea of the ſaid John by him above pleaded, in reply to the ſaid plea of the ſaid William by him ſecondly above pleaded in bar, ſaith, that he doth the like: And the ſaid William, as to the ſaid John the plaintiff by him above pleaded, in reply to the ſaid plea of the ſaid William by him laſtly above pleaded in bar, ſaith, that he doth the like.

Rejoinder.

The plaintiff's replications conclude to the country, and the defendant hath only to take iſſue on the replications, by giving the *paratum* to each, but if the defendant demurs, and as Mr. Serjeant Cook hath alſo ſaid, I think that the plaintiff will be entitled to a verdict in his favour. It cannot, therefore, be left to the defendant's own diſcretion, whether he will join iſſue or ſuffer judgment by default.

LONDON, to wit. John Wood againſt John Bell, in a plea of covenant broken: for that whereas by a certain indenture made on the fourteenth day of September A. D. 1780, to wit, at London aforeſaid, in the parish of St. Mary-le-bow, in the ward of Cheap, and which ſaid indenture, ſealed with the ſeal of the ſaid defendant, the ſaid plaintiff now brings into court, the date whereof is the ſame day and year aforeſaid: It is witneſſed, that the ſaid plaintiff, by the name and deſcription of John Wood, of Eaſham, in Oxfordſhire, with the conſent of his father William Wood, put himſelf apprentice to the ſaid defendant by the name and deſcription of Captain John Bell, of Wapping, to learn his art with him after the manner of an apprentice, to ſerve from the date of the ſaid indenture unto the full end and term of four years from thence next following, to be fully complete and ended; during which term the ſaid apprentice his ſaid maſter faithfully ſhall ſerve, his ſecrets keep, his lawful commands every where gladly do; he ſhould do no damage to his ſaid maſter, nor ſee to be done of others, but that he to his power ſhould let or forthwith give warning to his ſaid maſter of he ſhould not waſte the goods of his ſaid maſter, nor lend them unlawfully to any; he ſhould not commit fornication, nor contract matrimony within the ſaid term; he ſhould not play at cards, dice, tables, or any other unlawful games, whereby his ſaid maſter might have any loſs with his own goods or others during the ſaid term, without licence

Declaration in covenant by apprentice againſt his maſter, for diſcharging him before the expiration of his term, not finding, &c. nor paying wages.

cence of his ſaid maſter; he ſhould neither buy nor ſell; he ſhould not haunt taverns or play-houſes, nor abſent himſelf from his ſaid maſter's ſervice day nor night unlawfully, but in all things as a faithful apprentice he ſhould behave himſelf towards his ſaid maſter and all his during the ſaid term: And the ſaid Captain John Bell, his ſaid apprentice in the ſame art of a mariner, which he uſed by the beſt means that he could, ſhould teach and inſtruct, or cauſe to be taught and inſtructed, finding unto his ſaid apprentice ſufficient meat, drink, and lodging, during the ſaid term, and alſo pay him five pounds for the firſt year, ſix pounds for the ſecond year, ſeven pounds for the third year, and ten pounds for the fourth year, and for the true performance of all and every the ſaid agreements, either of the ſaid parties did bind himſelf unto the other by the ſaid indenture, as by the ſaid indenture, relation being thereunto had may more fully and at large appear: And the ſaid plaintiff in fact ſays, that the ſaid plaintiff, by virtue of the ſaid indenture afterwards, to wit, on the ſame day and year aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, entered and was received into the ſervice of the ſaid defendant, to ſerve the ſaid defendant as ſuch apprentice in the art aforeſaid, during the ſaid term in the ſaid indenture mentioned, and that he the ſaid plaintiff ſtaid and continued in the ſaid ſervice of the ſaid defendant from thence for and during part of the ſaid term of four years in the ſaid indenture mentioned, to wit, until the firſt day of April A. D. 1782, to wit, at London, &c. aforeſaid, and was then and there ready and willing, and offered to be and continue in the ſaid defendant's ſervice, and to ſerve him as an apprentice in the art aforeſaid from thence until the end and expiration of the ſaid term of four years in the ſaid indenture mentioned, and to perform and fulfil every thing in the ſaid indenture contained on his part and behalf as ſuch apprentice to be done, performed, and fulfilled: Yet the ſaid plaintiff in fact ſays, that the ſaid defendant afterwards, and during the continuance of the ſaid term, to wit, on the ſame day and year laſt aforeſaid, at London, &c. aforeſaid, without the licence, and againſt the will of the ſaid plaintiff, diſcharged the ſaid plaintiff from and out of the ſervice of him the ſaid defendant, and kept and continued the ſaid plaintiff ſo as aforeſaid diſcharged from and out of the ſervice of him the ſaid defendant from thence until the end and expiration of the ſaid term in the ſaid indenture mentioned, and during all that time refuſed to permit and ſuffer the ſaid plaintiff to be and continue in the ſervice of him the ſaid defendant, and to teach and inſtruct, or cauſe to be taught and inſtructed the ſaid plaintiff in the art of a mariner, by the beſt means that he the ſaid defendant could, contrary to the form and effect of the ſaid indenture, and of the ſaid covenant of the ſaid defendant by him made as aforeſaid: And the ſaid John Wood further in fact ſays, that the ſaid defendant did not find for the ſaid plaintiff, his ſaid apprentice, ſufficient meat, drink, or lodging during the ſaid term of four years in the ſaid indenture men-

1ſt breach diſcharged plaintiff.

2d breach, did not find him in board and lodging.

mentioned, as he ought to have done according to the indenture, but during a great part of the ſaid term, to wit, from the ſaid firſt day of April A. D. 1782 aforeſaid, until the end and expiration of the ſaid term wholly neglected and refuſed ſo to do, and therein wholly failed and made default, contrary to the form and effect of the ſaid indenture, and of the ſaid covenant of the ſaid defendant ſo by him made in this behalf as aforeſaid: And the ſaid plaintiff further in fact ſays, that the ſaid defendant hath not at any time from the making of the ſaid indenture, hitherto paid, or cauſed to be paid to the ſaid plaintiff the ſaid five pounds for the firſt year, ſix pounds for the ſecond year, ſeven pounds for the third year, and ten pounds for the fourth year of the ſaid term of four years in the ſaid indenture mentioned, or any or either of thoſe ſums of money, or any part thereof; but the ſaid ſeveral and reſpective ſums of money above-mentioned are and each of them is ſtill in arrear and unpaid from the ſaid defendant to the ſaid plaintiff, contrary to the form and effect of the ſaid indenture, and of the covenant of the ſaid defendant ſo by him made in this behalf as aforeſaid; and ſo the ſaid plaintiff ſays, that the ſaid defendant, although often requeſted, hath not kept with the ſaid plaintiff the covenants made between them, but hath broken the ſame, and to keep the ſame hath hitherto wholly refuſed, and ſtill doth refuſe to the ſaid plaintiff his damages of four hundred pounds, and therefore he brings ſuit, &c.; pledges, &c.

3d Breach, did not pay him his ſtipulated wages.

And the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the breach of covenant by the ſaid plaintiff firſt above aſſigned, ſays, that he the ſaid defendant did not without the licence, and againſt the will of the ſaid plaintiff, diſcharge the ſaid plaintiff from and out of the ſervice of him the ſaid defendant, and keep and continue him the ſaid defendant ſo diſcharged from and out of the ſervice of him the ſaid defendant, and did not refuſe to permit or ſuffer the ſaid plaintiff to be or continue in the ſervice of him the ſaid defendant, and to teach and inſtruct, or cauſe the ſaid plaintiff to be taught and inſtructed in the art of a mariner, in manner and form as the the ſaid plaintiff hath above complained againſt him, and of this he puts himſelf upon the country, and the ſaid plaintiff doth ſo likewiſe: And as to the breach of covenant by the ſaid John Wood ſecondly above aſſigned, the ſaid defendant ſays, that the ſaid plaintiff, *(as to one)*; becauſe he ſays, that the ſaid plaintiff, after the making of the ſaid indenture of apprenticeſhip, and after he had entered and been received into the ſervice of the ſaid defendant, to wit, on the firſt day of Auguſt A. D. 1781, at London, &c. aforeſaid, he the ſaid defendant ſailed on a voyage to parts beyond the ſeas, in a certain ſhip or veſſel whereof the ſaid defendant is the maſter, and that the ſaid plaintiff ſailed in and on board the ſaid ſhip or veſſel with the ſaid defendant, to be by him

Plea to 1ſt breach, that defendant did not diſcharge him.

To 2d breach that plaintiff and defendant were ſhipwrecked in the Weſt Indies, that defendant procured plaintiff a paſſage home, but refuſed to maſt as in his power under theſe circumſtances.

he quitted the ſhip, and that defendant provided plaintiff with board and lodging as

taught

taught and inſtructed in the art of a mariner; and the ſaid ſhip or veſſel was afterwards, by the force of certain tempeſts and ſtorms wrecked in parts beyond the ſeas, to wit, in the Weſt Indies, with the ſaid defendant and plaintiff in and on board the ſame; and that he the ſaid defendant after the ſhipwreck of the ſaid ſhip or veſſel as aforeſaid, and as ſoon as he the ſaid defendant had it in his power ſo to do, did procure and engage one William Henderſon, then being maſter of a certain other ſhip or veſſel to furniſh a paſſage for and to carry the ſaid plaintiff from the Weſt Indies aforeſaid, to London aforeſaid, and to provide ſufficient meat, drink, and lodging for the ſaid plaintiff from the Weſt Indies aforeſaid, to London aforeſaid, that he the ſaid plaintiff on his arrival there might be again employed in the ſervice of the ſaid defendant, and be provided with ſufficient meat, drink, and lodging during the reſidue of the aforeſaid term, according to the form and effect of the ſaid indenture; and that the ſaid plaintiff afterwards, to wit, on the twenty-ſixth day of February A. D. 1782, with his own conſent went on board the ſaid laſt-mentioned ſhip or veſſel, to be carried by the ſaid William Henderſon, in the ſaid voyage from the Weſt Indies aforeſaid, to London aforeſaid; and the ſaid defendant further ſaith, that the ſaid plaintiff after he ſo as aforeſaid had gone on board the ſaid laſt-mentioned ſhip or veſſel for the purpoſe aforeſaid, to wit, on the day and year laſt aforeſaid, left and quitted the ſame, and did not at any time afterwards, during the ſaid term in the ſaid indenture mentioned, return into the ſervice of the defendant, but on the contray thereof, wholly neglected and omitted ſo to do, againſt the will and conſent of the ſaid defendant, that is to ſay, at London, &c. aforeſaid: *And the ſaid defendant ſaith*, that from the time of the making of the ſaid indenture unto the time of the ſaid ſhipwreck, he the ſaid defendant found and provided for the ſaid plaintiff ſufficient meat, drink, and lodging, according to the form and effect of the ſaid indenture, and that from the time of the ſaid ſhipwreck until the time of his the ſaid plaintiff's quitting the ſaid laſt-mentioned ſhip as aforeſaid, he the ſaid defendant found and provided for the ſaid plaintiff meat, drink, and lodging in as ample manner as he the ſaid defendant, under the circumſtances attending and conſequent to the ſaid ſhipwreck, was able, and had it in his power to do, that is to ſay, at London, &c. aforeſaid, and this, &c. wherefore, &c. if the ſaid plaintiff ought to have or maintain his aforeſaid action thereof againſt him, by reaſon of the ſaid breach of covenant ſecondly above aforeſaid, &c.: And as to the ſaid breach of covenant by the ſaid plaintiff laſtly above aſſigned, he the ſaid defendant ſaith, that the ſaid plaintiff *(actio non)*; becauſe he ſaith, that he the ſaid defendant after the making of the ſaid indenture, to wit, on the fourteenth day of September A. D. 1781, at London, &c. aforeſaid, did pay to him the ſaid plaintiff five pounds for the firſt year of the ſaid term, according to the form and effect of the ſaid indenture, and of the covenant of the ſaid defendant in that behalf made as aforeſaid; and the ſaid defendant further ſays, that the

To 3d breach, that he paid wages for firſt year.

the ſaid plaintiff after the making of the ſaid indenture of apprenticeſhip, and after he had entered and been received into the ſervice of the ſaid defendant, to wit, on the firſt day of Auguſt A. D. 1781, (*verbatim* like the laſt plea): And this, &c. wherefore, &c. if the ſaid plaintiff ought to have or maintain his aforeſaid action againſt him, by reaſon of the breach of covenant by the ſaid plaintiff laſtly above aſſigned, &c. S. LAWRENCE.

Replication to 2d plea, that plaintiff after quitting the ſhip, returned to defendant and offered to ſerve him, which defendant refuſed.

And the ſaid plaintiff, as to the ſaid plea of the ſaid defendant by him above pleaded in bar, as to the breach of covenant by the ſaid plaintiff ſecondly above aſſigned, ſays *(precludi non)*; becauſe he ſays, that although true it is, that after the making of the ſaid indenture of apprenticeſhip, and after he the ſaid plaintiff had entered and been received into the ſervice of the ſaid defendant, he the ſaid defendant did ſail on a voyage to parts beyond the ſeas, in a certain ſhip or veſſel, whereof he the ſaid defendant was the maſter, and that he the ſaid plaintiff ſailed in and on board the ſaid ſhip or veſſel with the ſaid defendant, to be by him taught and inſtructed in the art of a mariner, and that the ſaid ſhip or veſſel was afterwards, by the force of certain tempeſts and ſtorms, wrecked in the ſaid parts beyond the ſeas with the ſaid defendant and plaintiff in and on board the ſame; and that the ſaid defendant after the ſhipwreck of the ſaid ſhip or veſſel as aforeſaid, and as ſoon as the ſaid defendant had it in his power ſo to do, did procure and engage one William Henderſon, then being maſter of a certain other veſſel, to furniſh a paſſage for and to carry the ſaid plaintiff from the Weſt Indies aforeſaid, to London aforeſaid, and to provide ſufficient meat, drink, and lodging for the ſaid plaintiff from the Weſt Indies aforeſaid, to London aforeſaid, that he the ſaid plaintiff on his arrival there, might be again employed in the ſervice of the ſaid defendant, and be provided with ſufficient meat, drink, and lodging during the reſidue of the aforeſaid term, according to the tenor and effect of the ſaid indenture; and that he the ſaid plaintiff afterwards, with his own conſent, did go on board the ſaid laſt-mentioned ſhip or veſſel to be carried by the ſaid William Henderſon, in the ſaid voyage from the Weſt Indies aforeſaid, to London aforeſaid; and that he the ſaid plaintiff after he ſo as aforeſaid had gone on board the ſaid laſt-mentioned ſhip or veſſel for the purpoſe aforeſaid, left and quitted the ſame, as the ſaid defendant hath alledged in his aforeſaid plea by him above pleaded in bar to the ſaid breach of covenant ſecondly above aſſigned: Yet for replication in this behalf the ſaid plaintiff ſays, that he the ſaid plaintiff did afterwards during the ſaid term in the ſaid indenture mentioned, and as ſoon as he poſſibly could after he had ſo as aforeſaid quitted the ſaid ſhip of the ſaid W. H. to wit, on the firſt of May A. D. 1782 aforeſaid, at London, &c. aforeſaid, return to the ſaid defendant to ſerve the ſaid defendant as ſuch apprentice for the reſidue of the ſaid term in the ſaid indenture mentioned, and then and there was ready and willing, and offered to ſerve the ſaid defendant as ſuch apprentice for the then reſidue of the ſaid term in the ſaid in-

denture mentioned; but that the ſaid defendant then and there refuſed to receive the ſaid plaintiff into his ſervice, and did not from that time during the reſidue of the ſaid term in the ſaid indenture mentioned, find for the ſaid plaintiff, his ſaid apprentice, meat, drink, or lodging as he ought to have done according to the ſaid indenture, but wholly refuſed and neglected ſo to do, contrary to the ſaid indenture, and his covenant in that behalf made as aforeſaid, and this the ſaid plaintiff is ready to verify; wherefore he prays judgment and his damages, by reaſon of the premiſes to be adjudged to him, &c.: And the ſaid plaintiff as to the ſaid plea of the ſaid defendant laſtly above pleaded in bar, as to the ſaid breach of covenant by the ſaid plaintiff laſtly above aſſigned, ſays, that he the ſaid plaintiff by reaſon of any thing in that plea alledged, ought not to be barred from having and maintaining his aforeſaid action thereof againſt the ſaid defendant; becauſe he ſays, that the ſaid defendant after the making of the ſaid indenture, did not pay to him the ſaid plaintiff five pounds for the firſt year of the ſaid term, according to the form and effect of the ſaid indenture, and the ſaid covenant of the ſaid defendant in that behalf made as aforeſaid, as he the ſaid plaintiff hath above in his ſaid plea laſtly above pleaded in bar alledged; and this the ſaid plaintiff prays may be enquired of by the country, and the ſaid plaintiff doth the like, &c. H. RUSSELL.

Rejoinder and iſſue.

And the ſaid defendant, as to the plea of the ſaid plaintiff by him above pleaded by way of reply to the plea of him the ſaid defendant above pleaded, as to the breach of covenant by the ſaid plaintiff ſecondly above aſſigned, ſays, that the ſaid plaintiff by reaſon of any thing therein contained ought not to have or maintain his ſaid action thereof againſt him, by reaſon of the ſaid breach of covenant ſecondly above aſſigned; becauſe he ſaith that the ſaid defendant did not refuſe to receive the ſaid plaintiff into his ſervice in manner and form as the ſaid plaintiff hath in his ſecond replication above alledged; and of this he puts himſelf upon the country, &c. and the ſaid plaintiff doth the like, &c. therefore, &c. S. LAWRENCE.

Declaration by maſter againſt apprentice for not ſerving his time.

LONDON, *ſſ.* William Sequeſt againſt Thomas Shepherd, in a plea that he keep with him the covenant by him made with ſaid plaintiff, according to the form and effect of a certain indenture thereof made between them the ſaid plaintiff and ſaid defendant, and thereupon ſaid plaintiff, by A. B. complains, that whereas by a certain indenture made the eleventh day of, &c. at, &c. in, &c. between the ſaid defendant by the name of, &c. ſon of, &c. of the one part, and the ſaid plaintiff by the name of, &c. of the other part, which ſaid indenture, ſealed with the ſeal of ſaid defendant, and bearing date the day and year aforeſaid, the ſaid plaintiff now brings into court here: ſaid defendant did put himſelf apprentice to the ſaid plaintiff to learn his art, and with him after

after the manner of an apprentice, from [illegible] day of the date of ſaid indenture unto the full end and term of ſeven years, from thence next enſuing, and fully to be complete and ended; during which ſaid term ſaid apprentice his maſter lawfully ſhould and gladly ſerve, his ſecrets keep, and lawful commands every where gladly do; he ſhould do no damage to his ſaid maſter, nor ſee it to be done by others, but to his power ſhould let or forthwith give notice to his ſaid maſter of the ſame; the goods of his ſaid maſter he ſhould not waſte, nor lend them unlawfully to any; hurt to his ſaid maſter he ſhould not do, cauſe, or procure to be done, he ſhould neither buy nor ſell without his ſaid maſter's leave; taverns or alehouſes he ſhould not haunt; at cards, dice, tables, or any unlawful game he ſhould not play; matrimony he ſhould not contract, nor from the ſervice of his ſaid maſter day or night abſent himſelf; but in all things as a faithful and honeſt apprentice ſhould and would demean and behave himſelf towards his ſaid maſter, and all his family during ſaid term; and for the true performance of all and ſingular the covenants and agreements in ſaid indenture contained, either of the ſaid parties bound himſelf to the other firmly by the ſaid indenture, as in and by the ſaid indenture, relation being thereto had, will more fully appear: And ſaid plaintiff avers, that ſaid defendant on, &c. in, &c. at, &c. in purſuance of ſaid indenture, entered and was received into the ſervice of ſaid plaintiff; and ſaid plaintiff further ſaith, that afterwards, and during the continuance of ſaid term of ſeven years in ſaid indenture mentioned, and before the end and expiration thereof, that is to ſay, on, &c. he ſaid defendant without the leave, licenſe, and conſent, and againſt the will of ſaid plaintiff, departed, abſented, and withdrew himſelf from and out of the ſervice of ſaid plaintiff, and ſtayed and continued from and out of the ſervice of ſaid plaintiff for and during a long ſpace of time, to wit, from thence until the end, expiration, and determination of ſaid term of ſeven years in ſaid indenture mentioned, contrary to the tenor and effect, true intent, and meaning of ſaid indenture, and of ſaid covenant of him ſaid defendant ſo by him made in this behalf as aforeſaid; whereby and by means whereof he ſaid plaintiff, during all that time, wholly loſt and was deprived of all the profit, benefit, and advantage that might and would have ariſen and accrued to him from the ſervice of ſaid defendant during all that time, at, &c. aforeſaid; and ſo ſaid plaintiff in fact ſaith, that ſaid defendant, although often requeſted, hath not kept ſaid covenant, &c. but, &c., damage one hundred pounds; and ſuit, &c.

V. LAWES.

MIDDLESEX, to wit. Joſeph Hutchinſon againſt John Declaration. Colegate Cripps, being, &c. in a breach of covenant, for that [illegible] whereas by a certain indenture made the ſeventh day of, &c. to [illegible] plaintiff, who was his apprentice, with meat, drink, and lodging, and neceſſaries and aſſiſtance during the ſickneſs of plaintiff, whereby he was obliged to find them himſelf,

wit, at, &c. between the ſaid Joſeph and the ſaid John, the counterpart of which ſaid indenture, ſealed with the ſeal of the ſaid John, the ſaid Joſeph now brings into court here, the date whereof is the day and year aforeſaid; the ſaid Joſeph did put himſelf apprentice to the ſaid John, by the name of John Colegate Cripps, citizen and vintner of London, to learn his art, and with him after the manner of an apprentice to ſerve from the day of the date of the ſaid indenture, until the full end and term of ſeven years from thence next following to be fully compleat and ended; during which term the ſaid apprentice his ſaid maſter faithfully ſhould ſerve, his ſecrets keep, his lawful commands every where gladly do; he ſhould do no damage to his ſaid maſter, nor ſee it to be done of others, but that he to his power ſhould let or forthwith give warning to his ſaid maſter of the ſame; he ſhould not waſte the goods of his ſaid maſter, nor lend them unlawfully to any; he ſhould not commit fornication, nor contract matrimony within the ſaid term; he ſhould not play at cards, dice, tables, or any other unlawful games, whereby his ſaid maſter might have any loſs with his own goods or others during the ſaid term without licence of his ſaid maſter; he ſhould neither buy nor ſell; he ſhould not haunt taverns or playhouſes, nor abſent himſelf from his ſaid maſter's ſervice day or night unlawfully, but in all things as a faithful apprentice he ſhould behave himſelf towards his ſaid maſter during the ſaid term; and the ſaid maſter, that is to ſay, the ſaid J. C. C. in conſideration of the ſervice of his ſaid apprentice in the ſame art and myſtery which he uſed, by the beſt means that he could ſhould teach and inſtruct, or cauſe to be taught and inſtructed, finding unto his ſaid apprentice meat, drink, lodging, and all other neceſſaries, *according to the cuſtom of the city of London* during the ſame term, performance of all and every the ſaid covenants and agreements, either of the ſaid parties bound themſelves unto the other by the ſaid indenture, as by the ſaid indenture, relation being thereto had, will more fully appear: And the ſaid Joſeph in fact further ſays, that although he the ſaid Joſeph, on, &c. entered and was received into the ſervice of the ſaid J. C. C. and continued to ſerve the ſaid J. C. C. as ſuch apprentice as aforeſaid, for and during the ſaid term of ſeven years, in the ſaid indenture mentioned, according to the tenor and effect of the ſaid indenture; yet the ſaid John in fact further ſays, that the ſaid J. C. C. did not find unto him the ſaid Joſeph meat, drink, lodging, and all other neceſſaries, *according to the cuſtom of the city of London* during the ſaid term, according to the tenor and effect of the ſaid indenture, and of the covenant of the ſaid J. C. C. in that behalf made as aforeſaid, but on the contrary, he the ſaid Joſeph ſays, that although he the ſaid Joſeph during the ſaid term, to wit, on, &c. at, &c. became and was ſick, ill, and indiſpoſed, and ſo for a long time during the aforeſaid term did continue, whereof the ſaid J. C. C. had notice, to wit, at, &c.; and although according to *the cuſtom of the city of London in ſuch like caſes, and* the tenor and effect of the aforeſaid indenture,

the

the ſaid J. C. C. ought to have found unto the ſaid Joſeph for and during ſuch ſickneſs and indiſpoſition, certain neceſſary medicines and medical aſſiſtance; yet the ſaid Joſeph avers, that the ſaid J. C. C. did not nor would find unto him the ſaid Joſeph ſuch neceſſary medicine and medical aſſiſtance for and during his aforeſaid ſickneſs and indiſpoſition, but refuſed and neglected ſo to do, and therein wholly failed and made default, contrary to the tenor and effect of the aforeſaid indenture, and of the aforeſaid covenant of the ſaid J. C. C. in that behalf, to wit, at, &c. whereby he the ſaid Joſeph was forced and obliged to find and pay for ſuch medicines and medical aſſiſtance himſelf, and on that occaſion to lay out and expend divers ſums of money, amounting in the whole to a large ſum of money, to wit, the ſum of thirty pounds of lawful money of Great Britain, to wit, at, &c.: And whereas, &c. &c. (exactly the ſame as the firſt, only omitting what is in italic, and then conclude as follows): And ſo the ſaid Joſeph ſaith, that the ſaid J. C. C. hath not kept with the ſaid Joſeph his ſaid covenants ſo by him made with the ſaid Joſeph as aforeſaid, but hath broken the ſame, to the damage of the ſaid Joſeph of one hundred pounds, and therefore he brings his ſuit, &c. V. LAWES. 2d Count.

And the ſaid defendant by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the ſaid breach of covenant by the ſaid Joſeph in the firſt Count above aſſigned, he the ſaid J. C. C. ſays, (*actio non*;) becauſe he ſays, that the ſaid J. C. C. did find unto him the ſaid Joſeph meat, drink, lodging, and all other neceſſaries, *according to the cuſtom of the city of London*, during the ſaid term in the ſaid indenture mentioned, according to the tenor and effect of the ſaid covenant, and of the covenant of the ſaid J. C. C. in that behalf made as aforeſaid, and of this he puts himſelf upon the country, &c.: And for further plea in this behalf, as to the ſaid breach of covenant by the ſaid Joſeph in the ſaid firſt Count of the ſaid declaration above aſſigned, the ſaid J. C. C. by leave of, &c. ſays, (*actio non*;) becauſe he ſays, proteſting that he the ſaid J. C. C. ought not, *according to the cuſtom of the city of London*, to have found unto the ſaid Joſeph for and during ſuch ſickneſs and indiſpoſition, neceſſary medicines and medical aſſiſtance, for plea in this behalf, he the ſaid J. C. C. ſays, that he was always ready and willing, and offered to find unto him the ſaid Joſeph neceſſary medicine and medical aſſiſtance for and during his ſaid ſickneſs and indiſpoſition in the ſaid firſt Count of the ſaid declaration mentioned, but the ſaid Joſeph then and there wholly refuſed to accept the ſame, and this, &c.; wherefore, &c. if, &c. (add two more pleas ſimilar to the laſt, only omitting what is in italic, and ſaying "ſecond Count" inſtead of the firſt.) Plea. performance, according to the cuſtom, &c.

W. BALDWIN.

...ation a-...ſt. an ap...entice, for re...ſiſting the ſe...vice of his maſ...; buſineſs,

LANCASHIRE, to wit. Roger Farrand and Joſeph Adkin complain of John Whitehead being, &c. in a plea of breach of covenant: for that whereas by a certain indenture made the eighteenth day of, &c. at, &c. between the ſaid John, by the name and addition of John Whitehead, of M. in the county of L. printer, of the one part; and the ſaid Roger and Joſeph, by the name and addition of R. F. and J. A. both of the ſame place, printers, emboſſers, and partners, of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid John, and bearing date the day and year aforeſaid, they the ſaid R. and J. now bring here into court); he the ſaid John, for the conſiderations therein mentioned, did, &c. &c. (recite the indenture), as by the ſaid indenture, reference being thereto had, will amongſt other things more fully and at large appear: And the ſaid R. and J. in fact ſay, that although the ſaid R. and J. from the time of the making of the ſaid indenture, hitherto have exerciſed and carried on, and ſtill do exerciſe and carry on the ſaid buſineſs of a printer and emboſſer in the ſaid indenture mentioned, by divers ways, means, and methods, which, until the diſcovering thereof by the ſaid John as hereafter mentioned, were unknown to others; and although the ſaid John, upon the making of the ſaid indenture, entered and was received into the ſervice of them the ſaid R. and J. in their ſaid buſineſs, upon and under the terms in the ſaid indenture, and continued in ſuch ſervice from thence for a long time, to wit, until the thirteenth day of, &c. A. D. 1787; and although they the ſaid R. and J. have always, from the time of the making of the ſaid indenture, performed and fulfilled all things in the ſaid indenture contained on their part and behalf of them the ſaid R. and J. to be performed and fulfilled, to wit, at, &c.: Yet proteſting that the ſaid John did not, whilſt he was ſo in the ſervice of the ſaid R. and J. as aforeſaid, perform or fulfil any thing in the ſaid indenture contained on the part and behalf of him the ſaid John to be performed and fulfilled; they the ſaid R. and J. in fact ſay, that the ſaid John hath not faithfully and inviolably kept the diſcoveries, inventions, improvements, and other ſecrets in trade of the ſaid Roger and Joſeph, but on the contrary, after the making of the ſaid indenture, and whilſt he the ſaid John was ſo in the ſervice of the ſaid R. and J. as aforeſaid, to wit, on, &c. and before and ſince, to wit, at, &c. he the ſaid John did diſcover, diſcloſe, reveal, and make known, and cauſe to be diſcovered, &c. unto one J. H. and one H. A. and divers other perſons who now are at preſent unknown to the ſaid R. and J. divers and very many of the ſaid diſcoveries, inventions, improvements, and other ſecrets in trade of them the ſaid R. and J. to wit, the machines, engines, compoſitions, proceſs, and method then and there uſed by them the ſaid R. and J. in emboſſing goods in their aforeſaid buſineſs, and divers other of the ſecrets in trade of them the ſaid R. and J. contrary to the tenor and effect of the ſaid indenture, and of the aforeſaid covenant of the ſaid John in that behalf made as aforeſaid: And the ſaid Roger and Joſeph further ſay, that

the ſaid John afterwards, and during the ſaid term of ſeven years in the ſaid indenture in that behalf mentioned, and before the full end and expiration thereof, to wit, on, &c. at, &c. did enter into, carry on, and was concerned in the printing and embolſing buſineſs for other and different perſons than the ſaid R. and J. to wit, for and with the ſaid J. H. and A. H. contrary to the tenor and effect of the ſaid indenture, and of the aforeſaid covenant of the ſaid John in that behalf made as aforeſaid; whereby, and by reaſon of which ſaid ſeveral premiſes, the ſaid machinery, engines, &c. uſed by them the ſaid R. and J. in their ſaid buſineſs, hath been and is divulged, and made known to the ſaid J. H. and to many others, and in conſequence thereof their ſaid ſecrets and inventions in trade, in their ſaid trade and buſineſs, are very much reduced in value, and are in danger of becoming wholly uſeleſs and unprofitable to them in future; and by means of the ſame having been ſo revealed and diſcloſed to the ſaid J. H. as aforeſaid, they the ſaid R. and J. to prevent his making uſe of them to their prejudice, or any further diſcloſing them, were forced and obliged to take him into, and to engage him in their ſervice in their ſaid buſineſs for a certain long term of years, whereof ſix and more are ſtill to come and unexpired, at and upon certain very high and diſadvantageous terms and wages, to wit, at the wages of two pounds two ſhillings *per* week, and have been obliged to pay, and muſt hereafter pay him ſuch wages during the remainder of his ſaid contract or employment, which they otherwiſe could not nor would have done, to wit, at, &c. and ſo, &c. common concluſion in covenant. V. LAWES.

Declaration in covenant by attorney of the father of a clerk, for enticing away, harbouring, and wearing, &c.

MIDDLESEX, to wit. John Walſh, late of, &c. was attached by his majeſty's writ of privilege iſſuing out of the court of our lord the king of the bench here, to anſwer unto George Parrott, gentleman, one of the attornies of the ſame court, according to the liberties and privileges of the ſaid court for ſuch attornies and other miniſters of the court aforeſaid from time immemorial there uſed and approved of, in a plea that he keep with the ſaid plaintiff the covenants made between the ſaid plaintiff and defendant, according to the force, form, and effect of certain articles of agreement thereof made between them, &c.: and thereupon the ſaid plaintiff, in his proper perſon, complains, that whereas by certain articles of agreement made on, &c. to wit, at, &c. in, &c. between one George Walſh, ſon of the ſaid John (by the name and addition of George Walſh, ſon of John Walſh, of South-ſtreet, in the pariſh of St. George's, Hanover-ſquare, in the county of Middleſex) of the firſt part; the ſaid plaintiff, (by the name, &c.) of the ſecond part, and the ſaid defendant (by the name, &c.) of the third part; (one part of which ſaid articles of agreement, ſealed with the ſeal of the ſaid defendant, he the ſaid plaintiff now brings here into court, the date whereof is the day and year aforeſaid), the ſaid G. W. did, by and with the conſent,

conſent, direction, and approbation of the ſaid John his father, put and place himſelf to and with the ſaid plaintiff, as his clerk, from the day of the date of the ſaid articles of agreement, for and during the full end and term of five years from thence next enſuing, and fully to be compleat and ended, if the ſaid plaintiff and G. W. ſhould both of them ſo long live; and the ſaid defendant, for himſelf, his executors and adminiſtrators, did thereby covenant, promiſe, and agree to and with the ſaid plaintiff, that is to ſay, that the ſaid G. W. his ſon ſhould and would, during the ſaid term, well, duly, truly, and faithfully dwell with and ſerve the ſaid plaintiff as his clerk, and demean and behave himſelf as a clerk ought to do to his maſter, and well and truly, to the utmoſt of his power and ability, diſpatch and perform all buſineſs which ſhould be given him in charge by the ſaid plaintiff, and alſo did and ſhould readily and willingly execute, perform, and obey all his lawful commands, &c. &c. [ſet forth the articles], as by the ſaid articles, reference being thereunto had, will amongſt other things more fully and at large appear; by virtue of which ſaid articles of agreement the ſaid G. W. afterwards, to wit, on, &c. at, &c. in, &c. entered, and was then and there received into the ſervice of the ſaid plaintiff as his clerk, and was and continued to be the clerk of the ſaid plaintiff, under, and by virtue of the ſaid articles of agreement for a long ſpace of time, to wit, from the day of the date thereof until and at the end and expiration of the ſaid term of five years therein mentioned, to wit, at, &c. in, &c.; and although he the ſaid G. P. did, during the ſaid term, well and truly perform, fulfil, and keep all things in the ſaid articles of agreement mentioned and contained on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning of the ſaid articles of agreement, to wit, at, &c. in, &c.; yet, proteſting that the ſaid John hath not performed, fulfilled, or kept any thing in the ſaid articles of agreement mentioned on his part and behalf to be performed, fulfilled, and kept, according to the tenor and effect, true intent and meaning thereof: the ſaid G. P. in fact ſaith, that the ſaid G. W. ſon of the ſaid John, did not nor would, during the ſaid term, faithfully dwell with or ſerve the ſaid G. P. as his clerk, or demean or behave himſelf as a clerk ought to do to his maſter, according to the tenor and effect, true intent and meaning of the ſaid articles of agreement in that behalf, but on the contrary thereof he the ſaid G. W. during the ſaid term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the ſaid term, at, &c. in, &c. wrongfully and unjuſtly, without the licence or permiſſion in writing, or otherwiſe, and againſt the will of the ſaid plaintiff, withdrew and abſented himſelf from the ſervice and dwelling of the ſaid G. P. contrary to the form and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid John by him in that behalf made as aforeſaid: And the ſaid G. P. further ſaith, that the ſaid G. W. did not nor would, during the ſaid term, well and truly, to the utmoſt of his power

or ability, diſpatch or perform all or any of the buſineſs which was given him in charge by the ſaid G. P. but wholly refuſed and neglected ſo to do. to wit, at, &c. in, &c. contrary to the form and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid John by him in that behalf made as aforeſaid: And the ſaid G. P. in fact further ſaith, that the ſaid G. W. did, during the ſaid term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the ſaid term, at, &c. in, &c. wrongfully and unjuſtly embezzle and purloin divers ſums of money to a large amount, to wit, to the amount of one hundred pounds of lawful money of Great Britain, and alſo certain wearing apparel, goods and chattels of a large value, to wit, of the value of fifty pounds of like lawful money which belonged to the ſaid G. P. and divers of his clients, contrary to the form and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid John by him in that behalf made as aforeſaid: And the ſaid G. P. in fact further ſaith, that the ſaid G. W. did, during the ſaid term, to wit, on, &c. and on divers other days and times between that day and the end and expiration of the ſaid term, at, &c. in, &c. wrongfully and unjuſtly reveal the ſecrets of the ſaid G. P. to divers of his clients, and to divers other perſons, contrary to the form and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid John by him in that behalf made as aforeſaid: And the ſaid G. P. in fact further ſaith, that the ſaid John (although often requeſted, &c.) did not, nor would, during the ſaid term, find and provide for him the ſaid John good or ſufficient meat, drink, waſhing, lodging, cloaths, phyſic, or other neceſſaries fitting or proper for a clerk or apprentice, but wholly refuſed and neglected ſo to do, to wit, at, &c. in, &c. contrary to the form and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid John ſo by him made in that behalf as aforeſaid; and ſo the ſaid G. P. in fact ſaith, that the ſaid John (although often requeſted ſo to do) hath not kept the ſaid covenants ſo by him made with the ſaid G. P. in manner and form aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid G. P. hath hitherto wholly refuſed, and ſtill refuſes ſo to do, wherefore the ſaid G. P. ſaith, that he is injured, and hath ſuſtained damage to the value of pounds, and therefore he brings his ſuit.

Drawn by MR. TIDD.

This precedent comes ſtrictly under *Articles of Agreement*, *ante*, but I thought it uſeful to claſs all theſe precedents relating to Maſter and Servant, Apprentice, Clerk, &c. under one head.

By ASSIGNEES against ASSIGNOR.

Declaration states a demiſe from A. to B. from B. to defendant, from defendant (on aſſignment of leaſe) to plaintiff's aſſignees; a deed poll from the plaintiff's aſſignees to the plaintiff; a covenant in the original leaſe from A. to B. that B. ſhould not under-let premiſes without A's conſent, and ſhould repair; covenant in leaſe from defendant to plaintiff's aſſignees; that the leaſe from B. to defendant was a good and valid leaſe and was not forfeited, and that defendant had full power to aſſign, &c. that he had good, &c.

LONDON, to wit. Richard Forreſt, late of London, merchant, was ſummoned to anſwer Jeremiah Morrell and Thomas Cole, aſſignees of Edward Francis, in a plea that the ſaid Richard keep with him the ſaid Jeremiah and Thomas the covenants made between him and the ſaid Edward Francis and his aſſigns, according to the force, form, and effect of a certain indenture thereof made between them: and thereupon the ſaid Jeremiah and Thomas, by A. B. their attorney, complain, that whereas, by a certain indenture of leaſe, made the twenty-ſeventh day of September, A. D. 1781, to wit, at, &c. between one Ann Howard of the one part, and one Daniel Dibble of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid A. H. they the ſaid Jeremiah and Thomas now bring into court here, the date whereof is the ſame day and year aforeſaid) the ſaid A. H. for the conſiderations therein mentioned did demiſe, leaſe, ſet, and to farm let unto the ſaid Daniel Dibble three certain meſſuages or tenements, with the appurtenances thereunto belonging, ſituate, lying, and being in the pariſh of, &c. (and in the ſaid indenture more particularly mentioned and deſcribed), to have and to hold the ſaid three ſeveral meſſuages or tenements, with the appurtenances, unto the ſaid D. D. his executors, adminiſtrators, or aſſigns, from the feaſt of St. Michael the Archangel then next enſuing the date of the indenture, for and during, and unto the full end and term of eighteen years from thence next enſuing, and fully to be complete and ended, yielding and paying therefore yearly, and every year during the ſaid term thereby demiſed unto the ſaid A. H. in caſe ſhe ſhould ſo long live, and her aſſigns, and in caſe of her death to ſuch perſon or perſons as ſhould become intitled to the freehold or inheritance thereof, the rent or ſum of fifty-ſeven pounds of good and lawful money of Great Britain, upon the four moſt uſual feaſts or times of payment of rent in the year, that is to ſay, the Nativity of, &c. &c. by even and equal portions, the firſt payment thereof to begin and be made on the feaſt of the Nativity of Our Lord Chriſt then next enſuing the date of the ſaid indenture; and the ſaid D. D. did for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree, to and with the ſaid A. H. her heirs and aſſigns (amongſt other things), that he the ſaid D. D. his executors and adminiſtrators, ſhould (*a*) *not, during the ſaid term, by the ſaid indenture of leaſe demiſed, grant, demiſe, bargain, aſſign, or let the ſaid thereby demiſed meſſuages or premiſes, or either of them, or that then preſent indenture of leaſe, to any perſon or perſons whatſoever, without the licence or conſent of the ſaid A. H. or ſuch other perſon or perſons as ſhould*

(*a*) he inſerted ad Count.

and would proper coſts charges, and ſuf repair,

ſupport, ſuſtain, maintain, tile, glaze, paint, pave, ſcour, cleanſe, empty, amend, and keep the ſaid ſeveral laſt-mentioned premiſes or tenements, and all the glaſs windows, rails, &c. &c. belonging to the ſame, in, by, and with all and all manner of needful and neceſſary reparations and amendments whatſoever, when, where, and as often as need or occaſion ſhould require during the ſaid laſt-mentioned term (caſualties happening by fire only excepted)."

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be thereafter intitled to the freehold and inheritance of the ſame, firſt had and obtained in writing, under his, her, or their hand and ſeal, provided always, that if it ſhould happen that the ſaid yearly rent of fifty-ſeven pounds, or any part thereof, ſhould be behind and unpaid for the ſpace of twenty days next after any of the ſaid days or times on which the ſame ought to be paid as aforeſaid, being lawfully demanded; or if the ſaid ſeveral meſſuages or premiſes ſhould not be well and properly repaired, and kept in repair, according to the covenant in the ſaid indenture of leaſe contained for that purpoſe; or if the ſaid D. D. his executors, adminiſtrators, or aſſigns ſhould let, demiſe, or aſſign the ſaid premiſes, or any part thereof, to any perſon or perſons whatſoever, without the licenſe firſt had and obtained in manner therein and hereinbefore mentioned, that then and from thenceforth, and in either of the ſaid caſes, it ſhould and might be lawful to and for the ſaid A. H. and her aſſigns, and ſuch other perſon or perſons as ſhould, after her death, be entitled to the freehold and inheritance of the ſaid thereby demiſed premiſes, into, and upon the ſame, or any part thereof, in the name of the whole, wholly to re-enter, and the ſame to have again, repoſſeſs, and enjoy, as in her or their firſt and former eſtate and eſtates, and the ſaid D. D. his executors, adminiſtrators, and aſſigns, and all other occupiers thereof, and from thence utterly to expel, put out, and remove any thing in the ſaid indenture before contained to the contrary notwithſtanding, as by the ſaid indenture, reference being thereto had (amongſt other things) will more fully and at large appear; by virtue of which ſaid demiſe he the ſaid D. D. afterwards, to wit, on, &c. at, &c. entered into the ſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof; and being ſo thereof poſſeſſed, by a certain other indenture, made the twenty-fourth day of March, A. D. 1785, at, &c. in, &c. between the ſaid D. D. of the one part, and the ſaid Richard of the other part (one part of which ſaid laſt mentioned indenture, ſealed with the ſeal of the ſaid D. D. they the ſaid Jeremiah and Thomas now bring here into court, the date whereof is the day and year laſt aforeſaid), the ſaid D. D. for the conſiderations therein mentioned, did demiſe, leaſe, ſet, and to farm let unto the ſaid Richard all thoſe the aforeſaid three ſeveral meſſuages or tenements, with the appurtenances, ſo demiſed to him the ſaid D. D. as aforeſaid, with their and every of their appurtenances, unto the ſaid Richard, his executors, adminiſtrators, and aſſigns, from the feaſt of the Annunciation of the Bleſſed Virgin Mary then next enſuing the date of the ſaid laſt-mentioned indenture, for and during, and unto the full end and term of fourteen years and one half-year from thence next enſuing, and fully to be complete and ended, yielding and paying therefore yearly and every year, during the ſaid term of fourteen years and an half, by the ſaid laſt mentioned indenture demiſed unto the ſaid D. D. his executors, adminiſtrators, and aſſigns, the rent or ſum of fifty-ſeven pounds of good and lawful money of Great Britain, upon the four moſt uſual feaſts or times

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of payment of rent in the year, that is to ſay, the Nativity of, &c. by even and equal portions, the firſt payment thereof to begin and be made on the feaſt of the Nativity of St. John the Baptiſt then next enſuing the date of the ſaid laſt-mentioned indenture, as by the ſaid laſt-mentioned indenture (relation being thereto had) will (amongſt other things) more fully and at large appear; by virtue of which ſaid laſt-mentioned demiſe he the ſaid Richard, afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof; and being ſo thereof poſſeſſed, by a certain other indenture, made the twenty-third day of April, A. D. 178-, at, &c. between the ſaid Richard of the one part, and the ſaid Edward Francis of the other part (one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal of the ſaid Richard, they the ſaid Jeremiah and Thomas now bring here into court, the date whereof is the day and year laſt aforeſaid), reciting in part the ſaid indenture of leaſe of the twenty-fourth day of March, 1785, he the ſaid Richard, for the conſiderations in the ſaid indenture laſtly above brought into court here mentioned, aſſigned, transferred, and ſet over unto the ſaid Edward Francis all thoſe the ſaid three ſeveral meſſuages or tenements, and premiſes, therein and herein before particularly mentioned and deſcribed, and all the eſtate, right, title, intereſt, term of years, benefit, claim, and demand whatſoever of him the ſaid Richard to the ſaid three ſeveral meſſuages or tenements, and premiſes, by the ſaid laſt-mentioned indenture aſſigned, together with the ſaid laſt-mentioned in part recited indenture of leaſe, to have and to hold the ſaid three ſeveral meſſuages or tenements, and premiſes, thereby aſſigned, or intended ſo to be, and every part and parcel thereof, with their and every of their appurtenances, unto the ſaid E. F. his executors, adminiſtrators, and aſſigns, from the feaſt day of St. John the Baptiſt then next enſuing, for and during the whole of the ſaid term of fourteen years and one half-year, then to come and unexpired, granted by the ſaid laſt-mentioned in part recited indenture of leaſe, from thence then next enſuing and fully to be complete and ended; and the ſaid Richard did by the ſaid indenture laſtly above brought into court here, for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid E. F. his executors, adminiſtrators, and aſſigns, in manner following, that the ſaid laſt-mentioned recited indenture of leaſe was a good and valid leaſe in the law for all the term and eſtate thereby granted, and was not forfeited, ſurrendered, or otherwiſe become void or voidable; and alſo that he the ſaid E. F. at the time of the ſealing and delivery of the ſaid indenture laſtly above brought into court here, had in himſelf good right, full power, and lawful and abſolute authority to bargain, ſell, aſſign, transfer and ſet over the ſaid premiſes thereby aſſigned unto the ſaid E. F. his executors, adminiſtrators, and aſſigns, in manner and form as aforeſaid, as by the ſaid laſt-mentioned indenture (reference being thereto had) will (amongſt other things) more fully and at large appear; by virtue of which ſaid laſt-mentioned

tioned indenture he the ſaid E. F. afterwards, to wit, on, &c. entered into the aforeſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof; and being ſo thereof poſſeſſed, by a certain deed-poll, made the ſeventh day of December, A. D. 1787, at, &c. in, &c. indorſed the ſaid laſt-mentioned indenture (which ſaid deed-poll, ſealed with the ſeal of the ſaid E. F. they the ſaid Jeremiah and Thomas now bring here into court, the date whereof is the day and year laſt aforeſaid), the ſaid E. F. for the conſiderations in the ſaid deed-poll mentioned, did bargain, ſell, aſſign, transfer, and ſet over unto the ſaid Jeremiah and Thomas all thoſe the ſaid three ſeveral meſſuages or tenements in the ſaid laſt-mentioned indenture mentioned, and all and ſingular other the premiſes, with the appurtenances, in and by the ſaid laſt in part recited indenture of leaſe demiſed, and by the indenture of the twenty-third day of April, 1787, aſſigned, and all his eſtate, right, title, intereſt, term, and term of years therein then yet to come and unexpired, benefit, profit, property, poſſeſſion, claim, and demand whatſoever, both at law and equity, of, in, to, or out of the ſaid leaſehold premiſes, together with the ſaid laſt in part recited indenture of leaſe and aſſignment thereof, to have and to hold the ſaid meſſuages or tenements, and all and ſingular other the premiſes by the ſaid deed-poll aſſigned, or intended to be, with their appurtenances, unto the ſaid Jeremiah and Thomas, their executors, adminiſtrators, and aſſigns, from thenceforth for and during all the reſt, reſidue, and remainder of the term of fourteen years and one half of a year, in and by the ſaid laſt in part recited indenture of leaſe demiſed therein, then yet to come and unexpired, as by the ſaid deed-poll (reference being thereto had, will, amongſt other things, more fully and at large appear); by virtue of which ſaid deed-poll, they the ſaid Jeremiah and Thomas afterwards, to wit, on the day and year laſt aforeſaid, entered into the aforeſaid demiſed premiſes, with the appurtenances, and became and were poſſeſſed thereof; and although they the ſaid Jeremiah and Thomas always well and truly performed and fulfilled all things in the ſaid indenture of the twenty-third day of April, 1787, contained, on the part and behalf of the ſaid E. F. and his aſſigns, to be performed and fulfilled, according to the tenor and effect of the ſaid deed-poll; yet, protelling that the ſaid Richard hath not performed or fulfilled anything in the ſaid laſt-mentioned indenture contained on his part and behalf to be performed and fulfilled: the ſaid Jeremiah and Thomas in fact ſay, that the ſaid indenture of leaſe in the ſaid indenture of the ſaid twenty-third day of April 1787 mentioned, and thereby in part recited as aforeſaid, was not, at the time of the making of the ſaid laſt-mentioned indenture, a good and valid leaſe in the law for all the term and eſtate thereby granted, or any part thereof, nor had the ſaid Richard in himſelf good right, full power, and lawful and abſolute authority to bargain, ſell, aſſign, transfer, and ſet over the ſaid premiſes by the ſaid laſt-mentioned indenture aſſigned unto the ſaid E. F. his executors, adminiſtrators, and aſſigns, in manner

ner and form as aforesaid, but on the contrary thereof the said Joseph and Thomas aver, that the said indenture of lease in the said indenture of the twenty third day of April 1787 mentioned, and thereby in part recited as aforesaid, at the time of the making of the said last-mentioned indenture, was a bad, invalid, forfeited, and voidable lease, and the said Richard had not in himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer, and set over the said premises by the said last-mentioned indenture assigned unto the said E. F. his executors, administrators and assigns, in manner and form aforesaid, for that *the said indenture of lease so mentioned, and in part recited in the said indenture of the twenty-third day of April 1787 as aforesaid, had been and was granted, and the said D. D. did thereby demise and let the said messuages and premises, so to him demised as aforesaid, to the said Richard, without the licence and consent of the said A. H. first had and obtained in writing under her hand and seal, to wit, at, &c. contrary to the tenor and effect of the aforesaid covenant and proviso* in the said indenture of lease of the twenty-third day of September 1781 in that behalf mentioned and contained, whereby the said indenture of lease so mentioned and in part recited in the said indenture of the twenty-third day of April 1787, became, and at the time of making the said last-mentioned indenture, was bad, invalid, forfeited, and voidable, for and on account of that cause of forfeiture; and being so forfeited and voidable, the said A. H. after the making of the said deed-poll and assignment to the said Joseph and Thomas, in the court of our lord the king before the king himself (the said court then and still being held at Westminster in the county of Middlesex), instituted and brought a certain action or suit in a plea of trespass and ejectment, in order to avoid the said lease of the twenty-fourth day of March 1785, so granted by the said D. D. as aforesaid upon and for such cause of forfeiture as aforesaid; and afterwards, to wit, in Easter term, in the twenty-eighth year of the reign of our lord the now king, by the consideration and judgment of the said court recovered judgment in the said action or suit, and thereby avoided the said last-mentioned lease upon and for such cause of forfeiture thereof as aforesaid, and in consequence thereof possession of the aforesaid premises was, and hath been since taken and obtained by and on the behalf of the said A. H. under and by virtue of a certain writ of our lord the king of *habere facias possessionem*, issued out of the said court of our said lord the king, before the king himself, upon the aforesaid judgment, whereby the estate and interest of the said Jeremiah and Thomas, under the aforesaid deed-poll, being of a large value, to wit, of the value of one thousand pounds of lawful money of Great Britain, were, have been, and are wholly defeated and destroyed, and the said Jeremiah and Thomas have lost and been deprived, and must hereafter lose and be deprived of all rents, profits, and other benefit thereof, and have been and were also obliged to lay out and expend divers sums of money, amounting in the whole to a large

sum

ſum of money, to wit, the ſum of one hundred pounds of lawful money, in and for the coſts of the ſaid ſuit or action in ejectment, to wit, at, &c. *And whereas* by a certain other indenture, made the twenty-ſeventh day of September in the year 178 as aforeſaid, at, &c. between the ſaid A. H. &c. &c. (this Count ſame as the firſt, only inſerting what is wrote in the margin, and omitting what is in italic, and then conclude): And ſo the ſaid Jeremiah and Thomas ſay, that the ſaid Richard (although often requeſted) hath not kept the covenants ſo by him made with the ſaid E. F. as aforeſaid, and his aſſigns, but hath broken the ſame, and to keep the ſame with the ſaid Jeremiah and Thomas hath hitherto wholly refuſed, and ſtill refuſes, to wit, at, &c. to the damage of the ſaid Jeremiah and Thomas of two thouſand pounds; and therefore he brings his ſuit, &c. *Drawn by* MR. LAWES.

Upon conſidering this caſe with attention, I think it adviſeable to have two Counts upon it; one alledging the forfeiture of the leaſe granted by D. D to be on account of its having been granted without leave; and another, alledging the forfeiture to have been incurred by the dilapidations; for whatever may have been the ground of the verdict in ejectment, the defendant in the preſent action being no party to that, is at liberty to diſpute the propriety of that judgment; and though the verdict in that action may have been obtained upon the ground of the underleaſe being without licence, yet the defendant is competent in this action to contend (if the fact will bear him out) that the forfeiture ſo incurred was obtained upon ſome other ground, or that it was waived by the acceptor of rent after the granting of the underleaſe, and after notice of the granting of it, and that the leſſor of the plaintiff ought not therefore to have recovered. Indeed, it is not unlikely to be contended, that the ejectment was not brought upon that ground, but upon account of the dilapidations, and the notice will moſt likely be brought forward as evidence of that fact. In this ſituation of things, therefore, I have thought it adviſeable to have a ſecond Count, alledging the dilapidations as the cauſe of forfeiture, although in truth the verdict in ejectment was upon another ground. There was no alledging that cauſe of forfeiture, however, to conſiſt in not repairing, purſuant to the notice for that purpoſe, as that notice did not expire till after the aſſignment from Ferreſt to Francis, in which the former covenants that the leaſe was at that time, to wit, at the time of ſuch aſſignment, a valid leaſe. I have therefore neceſſarily alledged the cauſe of forfeiture to be in the premiſes being out of repair at an antecedent period, contrary to the general covenant, to repair without regard to any particular notice. It is not likely that the execution of any of the deeds will be diſputed by the plea, of courſe, therefore, they will in that caſe ſtand admitted; but the plaintiffs muſt be prepared with evidence of both cauſes of forfeiture, and of the evidence on which the verdict in ejectment was obtained, and they muſt alſo prove the notices ſerved on the defendant, and their application to him to defend ſuch ejectment, together with the judgment of execution of the writ of poſſeſſion, and the money paid by them for their coſts, &c. V. LAWES.

Hilary Term, 28. Geo. 3.

KENT, to wit. Richard Daniel complains of Henry Hall, being, &c. of a plea of breach of covenant: for that whereas by a certain indenture made the ninth day of, &c. to wit, at, &c. between the ſaid Richard, by the name and deſcription of Richard Daniel, of, &c. in, &c. yeoman, of the one part, and the ſaid Henry, by the name and deſcription of, &c. of the other part, one part of which ſaid indenture, ſealed, &c. he the ſaid Richard, for the conſiderations in the ſaid indenture mentioned, did demiſe, leaſe,

Declaration againſt ant, for ting the premiſes ed to him plaintiff, down to and not the rent

leaſe, and to farm-let unto the ſaid Henry, his executors and adminiſtrators, all that barn, with the barn-yard and ſtable thereto belonging, as the ſame was then fenced in, ſituate, and being near Noke-ſtreet, in, &c. and alſo all thoſe ſeveral pieces or parcels of arable land, lying and being in the ſaid pariſh of, &c. containing by eſtimation eighteen acres, were the ſame more or leſs, five pieces or parcels whereof were lying in, &c.; and alſo all thoſe two ſeveral pieces or parcels of meadow land, containing by eſtimation ten acres, were the ſame more or leſs, lying and being in, &c. near a certain place called, &c. all which ſaid premiſes were part and parcel of a certain farm, then late the property and in the occupation of R. D. deceaſed, and had lately been parted from the ſaid farm, and were thereby intended to be demiſed to the ſaid Henry, with their appurtenances, together with all ways, roads, paths, and paſſages, unto and from, and out of the ſame premiſes (copy the deed to the end), as by the ſaid indenture, reference being thereto had, will amongſt other things more fully and at large appear: by virtue of which ſaid demiſe he the ſaid Henry entered into and upon all and ſingular the ſaid demiſed premiſes with the appurtenances, and was, and from thence hitherto hath been, and ſtill is thereof poſſeſſed for the ſaid term ſo to him thereof demiſed as aforeſaid: And the ſaid Richard in fact further ſaith, that although he the ſaid Richard hath, from the time of the making of the ſaid indenture of leaſe, hitherto well and truly performed all things in the ſaid indenture contained on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning thereof; yet, proteſting that the ſaid Henry hath not performed or fulfilled any thing in the ſaid indenture contained on his part and behalf to be performed and fulfilled, according to the tenor and effect thereof, he the ſaid Richard in fact ſays, that nine pounds nine ſhillings of the ſaid yearly rent of eighteen pounds eighteen ſhillings in the ſaid indenture mentioned, for half a year of the ſaid demiſed term, ending and ended on the feaſt-day of, &c. at, &c. on that feaſt-day in the year aforeſaid, at, &c. became and was due, owing in arrear, and unpaid from the ſaid Henry to the ſaid Richard, and ſtill are in arrear and unpaid, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid Henry in that behalf made as aforeſaid: And the ſaid Richard in fact further ſays, that the ſaid Henry, after the making of the ſaid demiſe, and during the continuance thereof, to wit, on, &c. and before the exhibiting the bill of the ſaid Richard, did lop, top, and ſhrove divers, to wit, one thouſand trees, then ſtanding, growing, and being on the ſaid demiſed lands and premiſes, which had not been theretofore uſually lopped, topped, and ſhroved, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid Henry in that behalf made as aforeſaid, whereby the ſaid trees, together with the eſtate and intereſt of and in the demiſed premiſes became and were very much injured, leſſened in value, and damnified: And the ſaid Richard in fact further ſays, that the ſaid Henry, after the making of the ſaid demiſe,

miſe, and during the continuance thereof, to wit, on, &c. and between that day and the exhibiting, &c. did commit, and permit and ſuffer to be done, into and upon the ſaid demiſed premiſes, wilful and negligent waſte, ſpoil, hurt, and deſtruction, to wit, in there cutting down divers, to wit, five hundred timber and other trees and pollards, and a large quantity of hedging and fencing, proſtrating, ſpoiling, and deſtroying, there then growing and being on the ſaid demiſed lands and premiſes, and in permitting and ſuffering divers, to wit, five hundred other timber and other trees and pollards, and a large quantity of hedging and fencing there alſo reſpectively growing and being in and upon the ſaid demiſed lands and premiſes, to be cut down, proſtrated, ſpoiled, and deſtroyed, and in various other particulars, reſpects, and inſtances, contrary to the tenor and effect of the aforeſaid indenture of leaſe, and of the covenants of the ſaid Henry in that behalf made as aforeſaid, whereby the ſaid eſtate and intereſt of the ſaid Richard of and in the ſaid demiſed premiſes, became and was further injured and damnified, to wit, at, &c.; and ſo the ſaid Richard ſaith, that the ſaid Henry (although often requeſted), hath not kept his ſaid covenant ſo by him made with the ſaid Richard in this behalf as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid Richard hath hitherto wholly refuſed, and ſtill refuſes, to wit, at, &c. to the damage of the ſaid Richard of five hundred pounds; and therefore, &c. V. LAWES.

MIDDLESEX, *ſſ.* Gilbert Sheldon *v.* John Hill: for that whereas by certain articles of agreement made, &c. (make a profit in *curia* of the articles, and then recite the demiſe and leſſees covenant for payment of the rent, and then proceed with a recital of defendant's covenant for ſecuring the payment of the rent, which in this caſe was to the effect following): And ſaid defendant did, in and by ſaid articles, bind himſelf to ſaid plaintiff for the true payment of ſaid yearly rent of fifty-two pounds by the ſaid E. W. (the leſſee) to ſaid plaintiff, at the times and in the proportions before mentioned for payment, as by ſaid articles of agreement, &c.: by virtue of which ſaid articles of agreement, the ſaid E. W. in the ſaid articles named after the making thereof, to wit, on, &c. entered into all and ſingular ſaid premiſes thereby demiſed with the appurtenances, and became and ſtill is poſſeſſed thereof for the ſaid term ſo to him thereof demiſed as aforeſaid: And ſaid plaintiff further ſaith, that although he ſaid plaintiff always, from the time of the making of ſaid articles of agreement, hitherto hath well, &c. on his part and behalf, &c. according to the true intent and meaning of ſaid articles, to wit, at, &c.: yet proteſting that ſaid defendant hath not, &c. he ſaid plaintiff in fact ſaith, that twenty-ſix pounds of the aforeſaid rent of fifty-two pounds in ſaid articles mentioned, and reſerved for one half-year of ſaid term thereby demiſed, ended on, &c. to wit, at, &c. became due and in arrear from ſaid E. W. in ſaid articles of agreement mentioned, to ſaid plaintiff, and ſo continued from thence until and after the end of ſaid twenty-ninth day of, &c. in, &c. contrary to the form and effect of ſaid articles of agreement, and the covenant of

Covenant. rent.

ſaid

said E. W. in that behalf made as aforesaid, whereby said defendant, according to the tenor and effect of said articles of agreement, and of said covenant of him said defendant in that behalf made as aforesaid, afterwards, and whilst twenty-six pounds of the rent aforesaid was due, owing in arrear, and unpaid, to wit, on, &c. became liable to pay to said plaintiff said twenty-six pounds of the rent aforesaid, so due, &c. to him as aforesaid; whereof the said defendant afterwards, and before the exhibiting, &c. to wit, on, &c. had notice, and was requested by said plaintiff to pay him said twenty-six pounds of the rent aforesaid so due and in arrear to him as aforesaid: But said plaintiff in fact further saith, that said defendant did not then and there pay, nor hath he at any time hitherto since paid said twenty-six pounds of the rent aforesaid so due and in arrear as aforesaid, or any part thereof, to said plaintiff, contrary to the tenor and effect of said articles of agreement, and of the covenant of said defendant in that behalf made as aforesaid, but the same are, and every part thereof is still in arrear and unpaid to said plaintiff, either by said defendant or said E. W. in said articles of agreement mentioned, to wit, at, &c.: And said plaintiff saith, that said defendant hath not kept his said covenant so by him made with said plaintiff as aforesaid (although often requested), but, &c. Damages fifty pounds.

V. LAWES.

This is a precedent under Articles of Agreement, but for the reason given, *ante* 439, I have classed all the precedents on Leases, by Lessor, &c. Lessee, &c. together, to follow.

[illegible] repairing between [illegible] and defendant's closes, [illegible] cattle [illegible] through [illegible] plaintiff's [illegible] and depasture the grass [illegible] down growing there.

LINCOLNSHIRE, *ff.* William Armstrong *v.* Robert Halifax: for that whereas said plaintiff, before the several grievances hereafter mentioned, to wit, on, &c. was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain close called Carr-house Place, with the appurtenances, lying and being in the parish of, &c.: and said defendant hath been, and still is possessed of and in a certain close called, &c. lying and being in the parish and county aforesaid, and contiguous and next adjoining to the aforesaid close of said plaintiff: And said plaintiff in fact further saith, that said defendant, and all others the tenants and occupiers of said close of him said defendant for the time being, from time whereof the memory of man is not to the contrary, until the defect thereof hereafter mentioned, have repaired and amended, and have used and been accustomed to repair and amend, and of right ought to have repaired and amended, and said defendant still of right ought to repair and amend the said hedges and fences between said close of said plaintiff, and the close called, &c. of said defendant, as often as occasion hath been, or required to prevent cattle feeding, depasturing, or being in those closes, from erring and escaping out of one into the other of them, and doing damage there; yet said defendant, well knowing the premises aforesaid, but contriving, &c. said plaintiff in the use, possession, and occupation of his aforesaid close, whilst they said plaintiff and defen-

defendant were so respectively possessed as aforesaid, to wit, on, &c. and on divers other days and times between that day and the exhibiting, &c. at, &c. wrongfully and unjustly suffered and permitted the hedges and fences between said close of said plaintiff, and the said close called, &c. of said defendant, to be and continue prostrate, fallen down, ruinous, and in great decay for want of needful and necessary repairing and amending the same, whereby divers cattle, as well of said defendant as of divers other persons to said plaintiff unknown, feeding and depasturing in said close called, &c. of said defendant, on the several days and times aforesaid, through the defects and insufficiency of the said hedges and fences, and for want of due reparation and amendment of the same, erred and escaped out of said close called, &c. of said defendant, unto the aforesaid close of said plaintiff, and eat up, trod down, consumed and spoiled the grass and corn of said plaintiff there then growing and being, to a large value, to the value of twenty pounds of lawful, &c. whereby said plaintiff was greatly injured and damnified, and lost and was deprived of a great part of the profit, benefit, and advantage of his said close, to wit, at, &c. (There was a second Count for other closes.) Plaintiff obtained a verdict. V. LAWS.

This precedent is in *Tort*. See Index. Torts to Corporeal Hereditaments.

LANCASHIRE, to wit. William St. Clare complains of John Robinson, being, &c; for that whereas before and at the time of the making of the indentures, and the several surrenders hereafter mentioned, the most noble George duke of Montague, and the right honourable Edward lord Beaulieu were seised in their demesne as of fee, of and in all the manner of Sladebourne, with the appurtenances, at G. in the county of York, whereof the several messuages, buildings, lands, and premises, with the appurtenances in the indenture and surrenders hereinafter mentioned, particularly described and referred to, then were and still are, and from time immemorial have been parcel, and so being parcel of the said manor during all the time aforesaid, have been and still are demised and demisable by the copy of the court roll of the said manor by the lords of the said manor, or by their steward of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according to the custom of the said manor: And the said Duke and Earl being so seised of the said manor, with the appurtenances, one T. R. and T. A. before and at the time of the making the indenture and surrenders hereafter mentioned, were seised of the said several messuages, &c. with their appurtenances, in their demesnes of fee, at the will of the lord, according to the said custom of the said manor; and being so seised thereof heretofore, to wit, on, &c, at L. in the county of L. aforesaid, it was agreed between the said T. R. and T. A. of the one part, and the said John Robinson of the other part, that the said T. R. and T. A. should by indenture to bear date the same day and year, demise the said several

Declaration on a covenant for non-payment of rent, and not repairing at the suit of assignee of reversion of copyhold premises, whereof the several surrenders are set out.

ſeveral meſſuages, &c. with the appurtenances, to the ſaid J. R. the defendant, for the term and under the terms, covenants, conditions, and proviſos in the ſaid indenture to be expreſſed and contained; whereupon afterwards, to wit, on, &c. at, &c. by a certain indenture then and there made between the ſaid T. R. and T. A. of the one part, and the ſaid defendant of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid defendant, the ſaid plaintiff now brings here into court, the date whereof is the day and year aforeſaid), reciting the ſaid agreement it is witneſſed, and the ſaid T. R. and T. A. did thereby for themſelves, their executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid defendant, his executors, adminiſtrators, and aſſigns, that it ſhould and might be lawful to and for the ſaid defendant, his executors, adminiſtrators, and aſſigns, by and under the payment of the rent, and performance of all and ſingular the covenants and agreements therein reſerved and contained, by and on his and their part and behalf to be paid and performed, peaceably and quietly to have, hold, uſe, occupy, poſſeſs, and enjoy all that meſſuage, &c. &c. (ſet out the premiſes *verbatim* to the end of *reddendum*): And the ſaid defendant did thereby for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree to and with the ſaid T. R. and T. A. their heirs and aſſigns, in manner following, that is to ſay, that he the ſaid defendant, his executors, adminiſtrators, and aſſigns, ſhould and would well and truly pay, or cauſe to be paid to the ſaid T. R. and T. A. their heirs and aſſigns, the ſaid yearly rent of forty pounds, at the days and times, and in manner and form therein before limited and appointed for the payment thereof, according to the true intent and meaning of the ſaid agreement, except and always reſerved out of the ſaid demiſe unto the ſaid T. R. and T. A. their heirs and aſſigns, all and all manner of timber trees, &c. then growing, or which ſhould at any time during the continuance of the ſaid demiſe grow upon the ſaid premiſes, or any part thereof; and alſo that he the ſaid defendant, his executors, adminiſtrators, and aſſigns, ſhould and would from time to time, and at all times during the continuance of the ſaid demiſe, maintain and keep the buildings of or belonging to the ſaid premiſes in good and ſufficient, &c. &c. (go on to the end of the covenant which was to keep the premiſes in repair, and to cleanſe and ſcour the ditches, for which they, the defendants were to be allowed one pound out of the rent of forty pounds), as by the ſaid indenture, reference being thereto had may more fully and at large appear: And the ſaid plaintiff in fact further ſaith, that after the making of the ſaid indenture and covenants therein contained, and in purſuance thereof, and to give effect to the ſame, to wit, on, &c. at, & the ſaid T. R. and T. A. out of court did come before M. R. gentleman, ſteward of the ſaid manor, and for divers good cauſes and conſiderations they the ſaid T. R. and T. A. did then and there ſurrender into the hands of the lord of the ſaid manor, by the acceptance of the ſaid ſteward, the ſaid

Surrenders ſet out.

 meſſuages,

meſſuages, &c. except the ſaid cloſes or parcels of land, called, &c. and uſually occupied therewith, to the intent that the lords of the ſaid manor having thereof ſeiſin by their aforeſaid ſteward of the ſaid manor for their time being, according to the cuſtom of the ſaid manor, ſhould give and grant the ſaid meſſuages, tenements, lands, and premiſes, and every part thereof, with the appurtenances, except as aforeſaid, unto the ſaid defendant, his executors, adminiſtrators, and aſſigns, to the uſe and behoof of the ſaid defendant, his executors, adminiſtrators, and aſſigns, for and during and unto the full end and term of fourteen years, to be completed as follows, that is to ſay, for making huſbandry upon the ſaid farm from Candlemas then laſt paſt, for the herbage of the ſaid farm from the twenty-fifth day of April then laſt paſt, and as to the houſing and outhouſing from the twelfth day of May then alſo laſt paſt, and fully to be complete and ended; nevertheleſs at the will of the lord, according to the cuſtom of the ſaid manor, by and under the payment of ſuch rents, and performance of and ſubject to all and ſingular ſuch covenants, proviſos, and agreements as in the ſaid indenture were and are reſerved and contained on the part of the ſaid defendant, his executors, adminiſtrators, and aſſigns, to be paid and performed: And the ſaid plaintiff in fact further ſays, that afterwards, to wit, on, &c. at the court of, &c. the ſaid George duke of M. and Edward earl of B. lords of the manor of S. aforeſaid, ſo held there for the ſaid manor, according to the cuſtom of the ſaid manor, on, &c. before the ſaid M. R. gentleman, the ſteward there, the ſaid defendant was in due form of law admitted tenant of the ſaid premiſes in the ſaid indenture contained, according to the form and effect of the ſaid ſeveral ſurrenders, to wit, at, &c. by virtue of which ſaid grant and ſurrender he the ſaid defendant duly entered into the ſaid premiſes in the ſaid ſurrender mentioned, and thereby ſurrendered as aforeſaid with the appurtenances, and was poſſeſſed thereof for the ſaid term to him thereof given and granted as aforeſaid, the reverſion of the ſaid ſurrendered premiſes with their appurtenances belonging to the ſaid T. R. and T. A their heirs and aſſigns, to wit, at, &c.; and the ſaid defendant being ſo poſſeſſed of the ſaid ſurrendered premiſes, with the appurtenances, and the reverſion thereof belonging to the ſaid T. R. and T. A. afterwards, to wit, on, &c at, &c. came before the ſaid M. R. ſo being the ſteward of the ſaid manor of S. as aforeſaid, and for divers good cauſes and conſiderations they the ſaid T. R. and T. A. did then and there ſurrender into the hands of the lords of the ſaid manor, by the acceptance of the ſaid ſteward, the ſaid reverſion of the ſaid ſeveral meſſuages, tenements, lands, and premiſes, to the intent that the lords of the ſaid manor having thereof ſeiſin by their aforeſaid ſteward of the ſaid manor for the time being, according to the cuſtom of the ſaid manor, ſhould give and grant the ſaid meſſuages and tenements, lands and premiſes, and thereby ſurrendered and ſo intended to be, and every part thereof with the appurtenances, unto the ſaid plaintiff, his heirs, and aſſigns, to and for the uſe and behoof of the ſaid plain-

tiff, his heirs and aſſigns for ever, at the will of the lords, according to the cuſtom of the ſaid manor, by and under the rent, ſuits, and ſervices to the lords of the ſaid manor, and their heirs, therefore due, and of right accuſtomed: And the ſaid plaintiff further ſays, that afterwards, to wit, on, &c. at the ſaid court of the ſaid Duke and Earl of the ſaid manor, held there for the ſaid manor, according to the cuſtom of the ſaid manor, on the day and year laſt aforeſaid, before the ſaid M. R. gentleman, ſteward there, the ſaid plaintiff was in due form of law admitted tenant of the ſaid reverſion of the ſaid ſeveral ſurrendered premiſes, according to the cuſtom of the ſaid manor, to wit, at, &c. by virtue of which ſaid laſt-mentioned grant the ſaid plaintiff became, and was and ſtill is ſeiſed in his demeſne as of fee of and in the ſaid reverſion at the will of the lord according to the cuſtom of the ſaid manor; and the ſaid plaintiff further ſays, that although he the ſaid plaintiff always from the time of his becoming ſeiſed of the ſaid reverſion of the ſaid ſurrendered premiſes, hitherto hath done, performed, and fulfilled, and kept every thing in the ſaid indenture on the part and behalf of the ſaid plaintiff to be done, performed, fulfilled, and kept; yet proteſting that the ſaid plaintiff hath not done, performed, fulfilled, and kept any thing in the ſaid indenture contained on his part and behalf to be done, performed, fulfilled, and kept; in fact the ſaid plaintiff ſays, that ſince the ſaid plaintiff became ſeiſed of the reverſion of the ſaid ſurrendered premiſes, to wit, on, &c. at, &c. ſeventy-eight pounds of the rent aforeſaid, for two years of the ſaid term, in the ſaid ſurrender of indenture mentioned, ending and ended on the ſaid twenty-fourth day of, &c. A. D. 1788, on that day became due and payable from the ſaid defendant to the ſaid plaintiff, yet the ſaid defendant hath not paid the ſum of ſeventy-eight pounds, or any part thereof to the ſaid plaintiff, but to pay the ſame hath hitherto wholly refuſed, and ſtill doth refuſe, and the ſame is ſtill wholly due in arrear and unpaid to the ſaid plaintiff, contrary to the form and effect of the ſaid covenant of the ſaid defendant ſo by him made as aforeſaid in that behalf: And the ſaid plaintiff in fact further ſays, that after he the ſaid plaintiff became ſeiſed of the ſaid reverſion of the ſaid ſurrendered premiſes, to wit, on, &c. for a long time afterwards, to wit, from thence hitherto all and ſingular the ſaid buildings ſtanding and being in and upon the ſaid granted and ſurrendered premiſes, were ruinous and in great decay, for want of needful and neceſſary repairing and amending thereof, in the thatching and glazing thereof, which ſaid premiſes ſo being out of repair and in decay for want of needful and neceſſary repairing and amending, he the ſaid defendant ſuffered and permitted ſo to be and continue for want of needful and neceſſary repairing and amending, for and during all the time laſt aforeſaid; and the highways upon and over the ſaid demiſed premiſes, on, &c. and from thence during all the time aforeſaid were, and by the ſaid defendant were ſuffered and permitted to be and continue out of repair and ruinous, bad, ſoft, miry, rotten, ſounderous, and unpaſſable

Breaches, non-payment of rent,

and not repairing.

for

for want of needful and neceſſary repairing and amendment, and in conſequence thereof the adjoining lands on each ſide of the ſaid ways became eat up, broken, laid waſte, and rendered barren and unprofitable by the feet of cattle, carts, and carriages of divers of his majeſty's ſubjects who had a right of paſſing along, and uſing the ſaid ſeveral highways, and the hedges, ditches, and fences upon, of, and belonging to the ſaid demiſed premiſes on, &c. were and from thence for a long time, to wit, hitherto have by the mere default and negligence of the ſaid defendant been, and continued, and have been ſuffered and permitted to be and remain ruinous, broken down, filled up, and in great decay for want of needful and neceſſary reparing, cleanſing and amending, and particularly by reaſon of ſuch neglect, and want of repairing of and in the hedges, fences, and ditches of and belonging to, and fencing in a certain orchard in and part and parcel of the ſaid demiſed and ſurrendered premiſes, divers cattle have from time to time, during all the time aforeſaid, ſtrayed and got into the ſaid orchard, and have pulled down, broke down, injured, ſpoiled, and deſtroyed divers fruit trees, &c. growing upon and belonging to the ſaid demiſed premiſes, contrary to the tenor and effect of the ſaid indenture, and of the covenants of the ſaid defendants in that behalf made as aforeſaid: And ſo the plaintiff ſays, that the ſaid defendant, although often requeſted, hath not kept with the ſaid plaintiff the ſaid covenants ſo made by the ſaid defendant with the ſaid T. R. and T. A. and their aſſigns, but hath broken the ſame, and hitherto wholly refuſed, and ſtill refuſes to keep the ſame; wherefore the ſaid plaintiff ſaith that he is injured, and hath ſuſtained damages to the value of five hundred pounds, for which he brings his ſuit, &c. T. BARROW.

SOMERSETSHIRE, ff. E. B. F. F. and F. his wife, complain of C. D. being, &c. of a plea of breach of covenant; for that whereas by a certain indenture made on, &c. to wit, at, &c. betwen the ſaid E. and one Thomas Smith, of, &c. now deceaſed, and the ſaid F. the then wife of the ſaid T. S. and now the wife of the ſaid F. F. of the one part, and the ſaid C. of the other part, one part, &c. (profert of the deed), they the ſaid E. and the ſaid T. S. in his lifetime, and the ſaid F. for the conſiderations therein mentioned, did demiſe unto the ſaid C. his executors, adminiſtrators, and aſſigns, all that piece or parcel of ground in a new ſtreet then called, or then intended to be called Gerard-ſtreet, ſituate, lying, and being in the pariſh of St. James, in the city of Bath, and alſo all that meſſuage or tenement, and dwelling-houſe thereon, or on ſome part or parts thereof then erecting and building by the ſaid C. with the appurtenances, to hold the ſame unto the ſaid C. his executors, adminiſtrators, and aſſigns, from the twenty-fourth of June then next enſuing the date of the ſaid indenture, for the term of ninety-eight years from thence next enſuing; yielding therefore yearly unto the ſaid E. B. J. S. and

Declaration ſurviving fors, and aftertaken band of them, leſſee for pairing buildings new ones by defen under a nant for purpoſe, taking de part of the miſes, and thereby dam ing the reſt.

Francis, and unto the ſurvivors and ſurvivor of them, and unto the executors, adminiſtrators, and aſſigns of ſuch ſurvivor, the rent or ſum of five pounds five ſhillings of lawful, &c.; and the ſaid C. for himſelf, his executors, adminiſtrators, and aſſigns, did covenant to and with the ſaid E. B. S. and F. the ſurvivors and ſurvivor of them, and the executors, adminiſtrators, and aſſigns of ſuch ſurvivor, by the ſaid indenture, that he the ſaid C. his executors, adminiſtrators, and aſſigns, ſhould and would during the ſaid term, as often as occaſion ſhould require, at his and their coſts and charges ſufficiently repair, and maintain and keep the ſaid meſſuage, tenement, or dwelling houſe, meſſuages, tenements, or dwelling houſes and premiſes, with the appurtenances, when ſo erected and built, in, by, and with all manner of needful and neceſſary reparations whatſoever, as by the ſaid indenture, amongſt other things, relation being thereto had, may more fully and at large appear; by virtue of which ſaid indenture the ſaid C. afterwards, to wit, on, &c. entered into and upon all and ſingular the ſaid demiſed premiſes, with the appurtenances, and was and from thence hitherto hath been and ſtill is thereof poſſeſſed for the ſaid term to him thereof demiſed: And the ſaid E. F. and F. in fact ſay, that the ſaid T. S. one of the leſſors named in the ſaid in-part recited indenture, after the making of the ſaid in-part recited indenture, to wit, on, &c. died, leaving the ſaid F. and the ſaid E. him ſurviving, to wit, at, &c.; and the ſaid plaintiffs in fact further ſay, that after the death of the ſaid T. S. as aforeſaid, and before the exhibiting, &c. to wit, on, &c. at, &c. the ſaid F. intermarried with and took to huſband the ſaid F. to wit, at, &c. and although the ſaid E. T. S. and F. in the lifetime of the ſaid T. S. and the ſaid E. and F. after the deceaſe of the ſaid T. S. and whilſt the ſaid F. was ſole, and before her intermarriage with the ſaid F.; and the ſaid plaintiff ſince the intermarriage of the ſaid F. with the ſaid F. as aforeſaid, have always from the time of the making of the ſaid in part recited indenture of leaſe, hitherto well and truly performed, &c. yet proteſting, &c. they the ſaid plaintiffs in fact ſay, that the ſaid C. did not, nor hath from time to time, and at all times during the ſaid term by the ſaid in-part recited indenture, demiſed, and whilſt he was and continued ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, as tenant thereof, under and by virtue of the ſaid in-part recited indenture, when, and as often as occaſion did require and hath required, well or ſufficiently repair, maintain, or keep the ſaid meſſuage, tenement, or dwelling houſe ſo as aforeſaid erected and built on the ſaid demiſed premiſes, at the time of the making the ſaid in part recited indenture of leaſe, or the meſſuages, &c. afterwards erected and built on the ſaid demiſed premiſes, in purſuance of a covenant of the ſaid C. in the ſaid in-part recited indenture contained, or any of them, or any part of the ſaid premiſes ſo as aforeſaid demiſed to the ſaid C. in and by the ſaid in-part recited indenture, in, by, and with all manner of needful and neceſſary reparations and amendments whatſoever, to the tenor and effect

fect, true intent and meaning of the ſaid indenture, and of the covenant of the ſaid C. by him made in that behalf as aforeſaid; but that the ſaid C. afterwards and whilſt he was and continued poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, under and by virtue of the ſaid in-part recited indenture, and after the death of the ſaid T. S. and after the ſaid intermarriage of the ſaid F. with the ſaid F. as aforeſaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting, &c. at, &c. without the leave or licenſe, and againſt the will of the ſaid plaintiffs, broke down, &c. a great part, to wit, five hundred ſquare feet of the thatch, &c. of and belonging to the aforeſaid meſſuage, ſo as aforeſaid erected and built in the ſaid demiſed premiſes, and being of a large value, to wit, of, &c. and took and carried away the ſame and converted, &c. and alſo then and there in thoſe ſeveral days and times aforeſaid, at, &c. without the leave, &c. broke down, &c. the walls of and belonging to the ſaid meſſuages or dwelling houſes, and part or parcel of the ſaid demiſed premiſes, with the appurtenances, and took, &c. thereof coming, of a large value, &c.; and took, &c. and converted, &c. whereby the ſaid meſſuages or dwelling houſes of and belonging to the ſaid demiſed premiſes, with the appurtenances, and part and parcel thereof became and were laid open, ruinous, and wholly out of repair, contrary, &c.: And the ſaid plaintiffs in fact further ſay, that the ſaid C. hath ſuffered and permitted the ſaid meſſuages, &c. to remain and continue ſo laid open, &c. in manner and by means aforeſaid, from the time when the ſame ſo as aforeſaid became and were laid open, &c. hitherto, to wit, at, &c. contrary to the tenor, &c.: and ſo the ſaid plaintiffs in fact ſay, &c (common concluſion in covenant); damages, &c.; Pledges, &c.

C. RUNNINGTON.

Declaration leſſor againſt aſſignee of leſſee for non payment of rent and for non-performance of covenants, &c.

LONDON, to wit. Mary Troutback, widow, complains of John Murray and John Rivington, being, &c. in a plea of breach of covenant: for that whereas by a certain indenture, made on, &c. at, &c. between the ſaid Mary (by the name, &c.) of the one part, and the ſaid Thomas Tuckey (by the name, &c.) of the other part (one part, &c.) ſhe the ſaid Mary, for the conſiderations therein mentioned, did demiſe, leaſe, ſet, and to farm let unto the ſaid T. T. all that meſſuage, &c &c. (ſet out the indenture) as by the ſaid indenture, relation being thereunto had, amongſt other things more fully appears; by virtue of which ſaid demiſe he the ſaid T. T. afterwards, to wit, on, &c. at, &c. entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances in the ſaid indenture mentioned, and became and was poſſeſſed thereof for the ſaid ſum to him thereof demiſed as aforeſaid; and being ſo poſſeſſed thereof afterwards, to wit, on, &c. all the eſtate, right, title, intereſt, term of years then to come and unexpired, property, claim, and demand whatſoever of him ſaid T. T. of and in and to the ſaid demiſed premiſes, with the appurtenances,

tenances, by aſſignment thereof then and there duly made, came to and veſted in the ſaid J. M. and J R. afterwards, to wit, on, &c.; by virtue of which ſaid aſſignment they the ſaid J. M. and J. R. afterwards, to wit, on, &c. entered into and upon all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and were thereof poſſeſſed for the reſt, reſidue, and remainder of the ſaid term of twenty-one years therein then to come and unexpired: And the ſaid Mary in fact further ſays, that after the ſaid J. M. and J R. became and were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, by aſſignment thereof as aforeſaid, to wit, on, &c. twenty-eight pounds of the rent aforeſaid, for one year of the ſaid demiſed term, elapſed ſince the ſaid J. M. and J. R. ſo became poſſeſſed of the ſaid demiſed premiſes by aſſignment as aforeſaid, on that day in the year aforeſaid, became and were due, owing in arrear, and unpaid from the ſaid J. M. and J. R. as aſſignees as aforeſaid to the ſaid Mary, and the ſame, and every part thereof, ſtill remains wholly in arrear and unpaid from the ſaid J. M. and J. R. to the ſaid M. contrary to the form and effect of the ſaid indenture, and of the covenant of the ſaid T. T. and his aſſigns in that behalf made as aforeſaid: And the ſaid Mary further ſaith, that after the ſaid J. M. and J. R. ſo became aſſignees of the ſaid demiſed premiſes as aforeſaid, and during the continuance of the aforeſaid term, to wit, on, &c. the ſaid demiſed meſſuage, &c. in the ſaid indenture mentioned, became and was greatly ruinous, &c. for want of needful and neceſſary reparation and amendment of the ſame in the roof, &c. and in other parts thereof; yet the ſaid J. M. and J. R. have not repaired and amended the ſame, or any part thereof, but on the contrary thereof have ſuffered and permitted the ſame, and every part thereof to remain and continue ſo ruinous, &c. for want of needful and neceſſary reparation and amendment of the ſame from thence hitherto, to wit, at, &c. contrary to the form and effect of the aforeſaid indenture, and of the ſaid covenant of the ſaid T. T. and his aſſigns in that behalf made as aforeſaid; and ſo the ſaid Mary ſays, that the ſaid J. M. and J R. have not, ſince they ſo became aſſignees of the ſaid demiſed premiſes as aforeſaid, kept with her the covenant made between her the ſaid T. T. and his aſſigns, in manner and form aforeſaid, but have broken the ſame, to the ſaid Mary her damage of one hundred pounds, &c. Suit, &c. W. WALTON.

Declaration by ſurviving executor of leſſor, who was a term of years, againſt aſſignee of leſſee, for not repairing premiſes, and leaving them out of repair.

CORNWALL, *ſſ.* Nicholas Funney the younger, late of, &c. aſſignee of N. Funney the elder, was ſummoned to anſwer unto John Hignan, ſurviving executor of the laſt will and teſtament of Joſeph Chaſwell deceaſed, in a plea that he keep with the ſaid J. H. the covenants made between the ſaid J C. in his lifetime, and the ſaid N. F. the elder, according to the force, form, and effect of a certain indenture thereof made between them, &c.; and thereupon, &c. that whereas by a certain indenture

made on, &c. at, &c. between the ſaid J. C. in his lifetime (by the name, &c.) of the one part, and the ſaid N. F. the elder (by the name of, &c.) of the other part (the counterpart of, &c.) reciting that whereas, &c. he the ſaid J. C. in his lifetime did demiſe, &c. &c. (ſet forth the demiſe, *habendum reddendum*, and covenants upon which the action is brought, then proceed as follows), as by the ſaid indenture brought here into court, relation being thereunto had, &c: And the ſaid plaintiff further ſays, that he the ſaid J. C. at the time of the making the ſaid demiſe, was poſſeſſed of the ſaid demiſed premiſes for the reſidue and remainder of a certain long term of years, whereof thirty years and more were then to come and unexpired; and that by virtue of the ſaid demiſe he the ſaid N. F. the elder afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes, with the appurtenances (except as before excepted), and became and was poſſeſſed thereof for the ſaid term to him thereof demiſed as aforeſaid; the reverſion thereof, with the appurtenances belonging as aforeſaid, he the ſaid J. C. afterwards, to wit, on, &c. duly made his laſt will and teſtament and in writing, and thereby then and there conſtituted and appointed John Cole and plaintiff joint executors thereof; and afterwards, to wit, on, &c. at, &c. died poſſeſſed of ſuch his ſaid eſtate of and in the ſaid reverſion, with the appurtenances, after whoſe death the ſaid J. C. and plaintiff, to wit, on, &c. duly proved the ſaid will, and took upon themſelves the burthen of the execution thereof; and the ſaid J. C. is ſince dead: And the ſaid plaintiff hath ſince ſurvived him, to wit, at, &c. and by reaſon thereof the ſaid plaintiff became and was, and ſtill is poſſeſſed of the ſaid reverſion, with the appurtenances; and being ſo poſſeſſed thereof, and the ſaid N. F. being ſo poſſeſſed of and in the ſaid demiſed premiſes, with the appurtenances (except, &c.) afterwards, to wit, on, &c. all the eſtate, right, title, intereſt, term of years then to come and unexpired, property, claim and demand whatſoever of the ſaid N. F. the leſſee of and into the ſaid demiſed premiſes, with the appurtenances (except, &c.) by aſſignment thereof then and there duly made, lawfully came to and veſted in the ſaid N. F. the younger, the now defendant; by means whereof the ſaid N. F. the younger, afterwards, to wit, on, &c. at, &c. entered into the ſaid demiſed and aſſigned premiſes, with the appurtenances (except, &c.), and became and was thereof poſſeſſed until and upon the firſt day of, &c. on which ſaid day the ſaid term of years mentioned in the ſaid indenture of demiſe was duly ended and determined, and on which day the ſaid N. F. the younger yielded and ſurrendered up the poſſeſſion of the ſaid demiſed and aſſigned premiſes, with the appurtenances, unto the ſaid plaintiff; and although the ſaid J. C. in his lifetime, always from the time of the making of the ſaid indenture of demiſe until the time of his death, and the ſaid J. C. and plaintiff, from the time of the deceaſe of the ſaid J. C. during the lifetime of the ſaid J. C. and the ſaid plaintiff, ſince the death of the ſaid J. C. hitherto hath well and truly performed and fulfilled the

ſaid

ſaid indenture in all things therein contained on the part and behalf of the leſſor and his executors to be performed and fulfilled; yet proteſting that the ſaid N. F. the younger, the ſaid aſſignee, hath not performed or fulfilled any thing in the ſaid indenture contained on the part and behalf of the ſaid leſſee and his aſſigns to be performed or fulfilled: But in fact the ſaid plaintiff ſays, that on, &c. and for the ſpace of two years and more then laſt elapſed, the ſaid demiſed premiſes, with the appurtenances in the ſaid indenture mentioned, were ruinous and in great decay for want of needful and neceſſary amending thereof in the covering, tiling, &c. and in the windows, &c. and in every other part and particular thereof, and the hedges, &c. of and belonging to the ſaid demiſed premiſes were, during all that time, ruinous, proſtrate, fallen down, and in great decay for want of needful and neceſſary repairing and amending thereof, and the ditches of and belonging to the ſaid demiſed premiſes, with the appurtenances, were, during all that time, foul, ruinous, filled up with mire, and out of repair for want of cleaning and ſcouring thereof, all which ſaid ſeveral premiſes, ſo being ruinous and out of repair, he the ſaid N. F. the younger ſuffered and permitted to be and continue ſo out of repair, and to want neceſſary repairs for and during all the time aforeſaid, contrary to the form and effect of the ſaid indenture, and of the aforeſaid covenant of the ſaid N F. the elder ſo made in that behalf as aforeſaid; and at the end of the ſaid term of twenty-one years, to wit, on, &c. at, &c. yielded up the ſaid demiſed premiſes, with the appurtenances, unto the ſaid plaintiff, ſo ruinous and out of repair, contrary to the form, &c. of the ſaid N. F. the elder, ſo made in this behalf as aforeſaid; and ſo the ſaid plaintiff ſays, that the ſaid N. F. the younger (although often requeſted) hath not, ſince he was ſo aſſignee of the ſaid demiſed premiſes as aforeſaid, kept the covenant aforeſaid ſo made between the ſaid J. C. and N. F. the elder, as aforeſaid, according to the form, &c. ſo made between them as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid plaintiff hath hitherto wholly refuſed, and ſtill does refuſe. Damage forty pounds. And he brings here into court the letters teſtamentary of the ſaid J C. which ſufficiently prove to the court here that the ſaid plaintiff is ſurviving executor of the laſt will and teſtament of ſaid J. C. and has adminiſtration thereof, &c. &c. *Drawn by* W. WARREN.

Declaration by [illegible] againſt aſ[illegible] of theſe[illegible] a term of [illegible]ars, ſix [illegible] and [illegible] [illegible] an an[illegible] payable quarterly for the ſix years, and ſpecific ſums for the ſix months and odd days, aſ[illegible] ſeparate breaches for the non payment of a quarter's rent out of the ſix years, the ſums cove[illegible] to be paid for the ſix months and odd days, and alſo of additional rent of forty ſhillings an acre, [illegible] upon defendant's ſowing ſome particular land with corn, and other land with barley, during [illegible] years of the term.

SURRY, *ſſ.* George Ruſſel, eſquire, complains of Robert Hawkes and Francis Okines, being, &c. of a plea of breach of covenant: for that whereas by a certain indenture made on, &c. to wit, at, &c. between the ſaid George (by the name of, &c.) of the one part, and one Robert Board (by the name, &c.) of the other part (one part, &c.) he the ſaid George, for the conſiderations

therein

therein mentioned did demiſe, leaſe, and to farm let unto the ſaid R. B. certain premiſes in the ſaid indenture particularly mentioned and deſcribed, to have and to hold the ſame unto the ſaid R. B. his executors, adminiſtrators, and aſſigns, from, &c. then laſt paſt, for and during, and unto the full end and term of ſix years, ſix calendar months, and eighty-ſix days from thence next enſuing, and fully to be complete and ended, yielding and paying unto the ſaid George, his executors, adminiſtrators, and aſſigns, for the firſt ſix years of the ſaid term, the yearly rent or ſum of three hundred and twenty pounds, by equal quarterly payments, on the twenty-fifth day, &c. the firſt payment to be made on the twenty-fifth day of, &c. then next enſuing the date thereof, and alſo yielding and paying to the ſaid George, his executors, &c. for the laſt ſix calendar months, the rent or ſum of one hundred and ſixty pounds of like lawful, &c. on the laſt day thereof, and for the laſt eighty-five days of the ſaid term the rent or ſum of eighty pounds of like lawful, &c. on the laſt day thereof; and the ſaid R. B. did thereby covenant, promiſe, and agree to, and with the ſaid George (amongſt other things), that he the ſaid R. B. his executors, &c. ſhould and would well and truly pay, or cauſe to be paid unto the ſaid George, his executors, &c. the ſaid yearly rent, and the ſeveral other rents in manner and on the ſeveral days and times thereinbefore mentioned, according to the true intent and meaning of the ſaid indenture; and further, that in caſe any of the fields or pieces or parcels of land therein and hereinafter mentioned, or any part thereof, that is to ſay, the ſeveral fields called the Great Meadow, the Orchard Field, the Clay Pits, the Little Many Fields, and the Ladland Hill Field, part of the premiſes thereinbefore mentioned, containing in the whole by eſtimation fifty acres or thereabouts, ſhould be thereafter ploughed, broken up, or ſown with any ſort of grain or corn during the laſt four years of the term thereby demiſed, that then he the ſaid R. B. his executors, &c. ſhould and would pay, or cauſe to be paid unto the ſaid George, &c. the ſum of forty ſhillings of lawful, &c. for every acre, and ſo in proportion for any greater or leſs quantity than an acre of the ſaid premiſes, over and above the rent thereinbefore reſerved to be paid, which ſhould be ſo ploughed, broken up, or ſown within the laſt four years of the ſaid term thereby demiſed, contrary to the true intent and meaning of the ſaid indenture, to be paid on ſuch of the feaſt-days aforeſaid, as ſhould firſt and next happen to come next after ſuch ploughing up or ſowing as aforeſaid, as by the ſaid indenture, relation being thereunto had, will, amongſt other things, more fully and at large appear: by force and virtue of which ſaid indenture the ſaid R. B. afterwards, to wit, on, &c. in, &c. entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof for the ſaid term ſo to him thereof demiſed (the reverſion thereof, with the appurtenances, after the expiration of the ſame term, belonging to the ſaid George), to wit, at, &c.: And the ſaid George in fact further-ſaith, that afterwards,

wards, to wit, on, &c. to wit, at, &c. all the eſtate, right, title, intereſt, term of years then to come and unexpired, property, claim, and demand whatſoever of the ſaid R. B. of and into the ſaid demiſed premiſes, with the appurtenances, by aſſignment thereof duly made, lawfully came to and veſted in the ſaid R. H. and F. O. whereby they the ſaid R. H. and F. O. then and there entered into and upon all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and were poſſeſſed thereof, and continued ſo poſſeſſed thereof from thence until and at the expiration of the ſaid term by the ſaid indenture granted, to wit, at, &c.; and although the ſaid George hath always, from the time of making the ſaid indenture until and at the expiration of the ſaid term, well and truly, &c. to wit, at, &c.; yet proteſting that the ſaid R. H. and F. O. after the ſaid aſſignment ſo made as aforeſaid, did not perform, &c. on their parts and behalves, as aſſignees of the ſaid premiſes, to be performed and fulfilled according to the tenor, &c.: the ſaid George in fact ſaith, that after the making of the ſaid indenture, and during the ſaid term thereby granted, and whilſt the ſaid R. H. and F. O. were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, to wit, on, &c. at, &c. a large ſum of money, to wit, the ſum of eighty pounds of the rent aforeſaid, for one quarter of a year of the ſaid term, ending on that day in the year laſt aforeſaid, became due and owing, and from thence hitherto hath been, and ſtill is in arrear and unpaid from the ſaid R. H. and F. O. to the ſaid George, contrary to the tenor, &c, and of the ſaid covenant of ſaid R. B. by him in that behalf made for himſelf and his aſſigns with the ſaid George in manner and form aforeſaid, to wit, at, &c.: And the ſaid George in fact further ſaith, that after the making the ſaid indenture, and during the ſaid term thereby granted, and whilſt the ſaid R. H. and F. O. were ſo poſſeſſed of the ſaid demiſed premiſes with the appurtenances as aforeſaid, to wit, on, &c. at, &c. a large ſum of money, to wit, the ſum of one hundred and ſixty pounds of the rent aforeſaid, for the laſt ſix calendar months of the ſaid term, ending on that day in the year laſt aforeſaid, became due and owing, and from thence, &c. (contrary to the tenor, &c. as before): And the ſaid George in fact further ſaith, that after the making of the ſaid indenture, and during the ſaid term thereby granted, and whilſt the ſaid R. H. and F. O. were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, to wit, on, &c. a large ſum of money, to wit, the ſum of eighty pounds of the rent aforeſaid, for the laſt eighty-five days of the ſaid term, ending on that day, &c. &c. (as before): And the ſaid George in fact further ſaith, that although the ſaid R. H. and F. O. after the making the ſaid indenture, and during the laſt four years of the term thereby granted, and whilſt they the ſaid R. H. and F. O. were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, to wit, on, &c. did ſow with corn (that is to ſay, with *wheat*), divers, to wit, *eleven* acres, part of the fields or pieces or parcels of land hereinbefore

ſore mentioned; whereby, and according to the tenor and effect of the ſaid indenture, and of the covenant of the ſaid R. B. by him in that behalf made for himſelf and his aſſigns, with the ſaid George as aforeſaid, they the ſaid R. H. and F. O. afterwards, to wit, on, &c. (being ſuch of the feaſt-days as firſt and next happened to come after ſuch ſowing with corn as aforeſaid), became liable to pay to the ſaid George the ſum of twenty-two pounds of lawful, &c. being at and after the rate of forty ſhillings of lawful, &c. for every acre of the ſaid premiſes ſo ſown with corn as aforeſaid; yet the ſaid R. H. and F. O. (although often requeſted) have not, nor hath either of them paid the ſaid ſum of twenty-two pounds, or any part thereof, to the ſaid George, but have, and each of them hath hitherto wholly refuſed and neglected ſo to do, and the ſame and every part thereof ſtill remains and is wholly due and owing from the ſaid R. H. and F. O. to the ſaid George, contrary to the tenor, &c. &c.: And the ſaid George in fact further ſaith, &c. &c. [ſame as the laſt breach to the end, only inſtead of *wheat* ſay barley, and the number of acres *five*]; and ſo the ſaid George in fact ſaith, that the ſaid R. H. and F. O. (although often requeſted, &c.) have not, nor hath either of them kept with the ſaid George the ſaid covenant ſo made by the ſaid R. B. for himſelf and his aſſigns, with the ſaid George in manner and form aforeſaid, but have broken the ſame, and to keep the ſame with the ſaid George have and each of them hath hitherto wholly refuſed, and ſtill do, and each of them doth refuſe, to the damage of the ſaid G. of five hundred pounds, and therefore he brings ſuit, &c. *Drawn by* Mr. Tidd.

James Mackay, executor, &c. of James Durnoe, deceaſed, *againſt* Robert Mackreth, esquire (having privilege, &c.), adminiſtrator, &c. of Sir. J. Shelly, baronet, deceaſed, and who in his lifetime, and at, &c. was aſſignee of his late father, Sir J. S. alſo deceaſed, in a plea of breach of covenant.

Declaration by executor of for (who poſſeſſed renewable and having manded, obtained newal, a leaſe ty-one determ leſſee of the teen admin the

MIDDLESEX. For that whereas by a certain indenture made, &c. at, &c. between the honourable Thomas Hervey, of the one part, and the aforeſaid J. Durnoe, of the other part, (one part, &c.) the ſaid Thomas Hervey, for the conſiderations in the ſaid indenture mentioned, did demiſe, leaſe, ſet, and to farm let, unto the ſaid J. Durnoe (amongſt other premiſes in the ſaid indenture particularly mentioned and deſcribed) a certain meſſuage, &c. with the appurtenances, &c. &c. to have and to hold the ſaid meſſuage, &c. with the appurtenances, unto the ſaid J. D. his executors, adminiſtrators, and aſſigns, from the feaſt day of, &c. then laſt paſt, for and during the term of twenty-one years from thence next enſuing, and fully to be complete and ended, at and under certain rents and covenants in the ſaid indenture mentioned; and the ſaid T. H. did, in and by the ſaid indenture, for himſelf,

the leaſe; 1ſt, for rent incurred; 2dly, for giving up the premiſes out of repair upon the tion of the term, at the expiration of the firſt fourteen years, in purſuance of the *proviſo*.

his

his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree to and with the ſaid J. D. his executors, &c. that in caſe the ſaid J. D. his executors, &c. or any of them ſhould be deſirous of taking a further leaſe of the premiſes by the ſaid indenture demiſed, for a further term of twenty-one years, to commence upon the expiration of the ſaid term of twenty-one years by the ſaid indenture granted, and ſhould ſignify his or their deſire in writing ſix months before the expiration of the ſaid term of twenty-one years by the ſaid indenture granted unto the ſaid T. H. his executors, &c. he the ſaid T. H. his executors, &c. ſhould and would, at ſuch requeſt, coſt, and charges of the ſaid J. D. his executors, &c. demiſe and grant the ſaid meſſuage, &c. with the appurtenances, to the ſaid J. D. his executors, &c. for a further term of twenty-one years, to commence from the expiration of the term of twenty-one years by the ſaid indenture granted, ſubject to the payment of ſuch rent, and the performance of ſuch covenants, &c. as were and are in the ſaid indenture mentioned and contained on the part and behalf of the ſaid J. D. his executors, &c. to be paid, kept, and performed, he the ſaid J D. his executors, &c. at the ſame time executing a counter-part of ſuch further leaſe (as by the ſaid indenture, &c.); by virtue of which demiſe, he the ſaid J. D. in his lifetime, to wit, on, &c. entered into, and became and was poſſeſſed of the ſaid meſſuage or dwelling-houſe and premiſes ſo to him demiſed as aforeſaid, for the ſaid term of twenty-one years in the ſaid indenture mentioned, together with ſuch right of renewal of the ſaid term as aforeſaid: And the ſaid plaintiff in fact further ſaith, that the ſaid J. D. being ſo poſſeſſed of the ſaid demiſed premiſes for the ſaid term, ſo to him thereof demiſed as aforeſaid, and having ſuch right of renewal of the ſaid term as aforeſaid, and being deſirous of taking a further leaſe of the ſaid premiſes by the ſaid indenture demiſed to him as aforeſaid, for a further term of twenty-one years, by the ſaid indenture granted upon the terms in that reſpect ſpecified and agreed upon in the ſaid indenture, he the ſaid J. D. according to the terms of the ſaid indenture, did, ſix months before the expiration of the ſaid term, by the ſaid indenture granted unto him by the ſaid T. H. to wit, on, &c. at, &c. ſignify unto the ſaid T. H. ſuch his the ſaid J. D's deſire in writing, to have ſuch further leaſe of the ſaid premiſes ſo to him demiſed as aforeſaid, and did require and demand ſuch further leaſe of the ſaid premiſes according to the ſaid right or power of renewal in the aforeſaid indenture mentioned: And the ſaid plaintiff in fact further ſaith, that the ſaid J. D. having ſuch right to renewal of the ſaid leaſe, ſo to him granted as aforeſaid, and having made ſuch election to have the ſame renewed as aforeſaid, and being ſtill deſirous of ſuch renewal, and being in poſſeſſion of the ſaid premiſes in virtue of his ſaid right of renewal, he the ſaid J. D. afterwards, to wit, on, &c. at, &c. by a certain indenture then and there made between the ſaid J. D. of the one part, and the ſaid Sir J. Shelly, the father of the ſaid Sir J. S. herein before mentioned, of the other

part

part (one part, &c.); and for the conſiderations in the ſaid laſt-mentioned indenture contained, did demiſe unto the ſaid Sir J. S. the father, his executors, &c. the aforeſaid meſſuage, &c. to have and to hold the ſame with the appurtenances thereunto belonging, unto the ſaid Sir J. S. the father, his executors, &c. from the feaſt of, &c. then laſt paſt, for and during, and unto the full end and term of twenty-one years from thence next enſuing, and fully to be complete and ended, ſubject, nevertheleſs, to a certain *proviſoe* in the ſaid laſt-mentioned indenture contained, for vacating and determining the ſaid laſt-mentioned demiſe at any of the times therein mentioned; yielding and paying, &c. [here follows covenants to pay the rent and to repair the premiſes, except the roof and tiling, and to leave them in repair]; and the ſaid J. D. did, by the ſaid laſt-mentioned indenture, for himſelf, his executors, &c. covenant, promiſe, and agree (amongſt other things) that if the ſaid Sir J. S. the father, his executors, &c. ſhould be inclined and deſirous to quit and deliver up the poſſeſſion of the ſaid meſſuage, &c. did, by the ſaid laſt-mentioned indenture intended to be let and to vacate the remaining part of the term thereby intended to be demiſed, at the end of the firſt ſeven, eleven, or fourteen years thereof; and of ſuch his or their intention or deſire ſhould give or leave ſix months previous notice in writing to or for the ſaid J. D. his executors, &c. at his or their uſual place of abode in London, or elſewhere in the county of Middleſex, that then, and from and after the expiration of ſix calendar months after ſuch notice thereof given or left as aforeſaid, the ſaid laſt-mentioned indenture of leaſe ſhould become void or null to all intents and purpoſes, and the remainder of the term thereby granted, ceaſe, and determine, as if the ſaid indenture had never been made, executed, nor entered into, as by the ſaid laſt-mentioned indenture, &c. &c.; by virtue of which ſaid laſt mentioned demiſe, Sir J. S. the father entered into the ſaid (1) *ſeveral premiſes by the ſaid laſt-mentioned indenture demiſed as aforeſaid*, with the appurtenances, and became and was poſſeſſed thereof *under and by virtue of the ſaid laſt-mentioned indenture* for the ſaid term ſo to him thereof demiſed as aforeſaid, and afterwards, to wit, on, &c. all the eſtate, right, &c. whatſoever of the ſaid Sir J. S. the father, of, in, to, or out of the ſaid (2) premiſes *to him demiſed as aforeſaid*, with the appurtenances, *by aſſignment thereof then and there lawfully made*, came to and veſted in the ſaid Sir J. S. the ſon, by (3) virtue whereof the ſaid Sir J. S. the ſon, in his lifetime, to wit, on, &c. entered into the ſaid (4) premiſes, with the appurtenances, and became and was poſſeſſed thereof for the then reſidue of the ſaid laſt-mentioned term (5): *And the ſaid plaintiff in fact further ſaith, that the ſaid J. D. having ſuch right of renewal of the ſaid term of years as aforeſaid, he the ſaid J. D. continued entitled to ſuch renewal of the ſaid term, and afterwards, and in the lifetime of the ſaid Sir J. S. the ſon*, to wit, at, &c. died *ſo entitled*, the ſaid laſt-mentioned demiſe to the ſaid J. D. being ſtill continuing, he the ſaid J. D. afterwards,"

(1) "laſt-mentioned" premiſes

(2) "laſt-mentioned"

(3) "ſon" by"

(4) "laſt-mentioned"

(5) "laſt-mentioned" of demiſed aforeſaid" the ſaid" the ſon" ſo poſſeſſed"

having firſt duly made his laſt will and teſtament in writing, and thereof appointed the ſaid plaintiff executor: And the ſaid plaintiff in fact further ſaith, that after the death of the ſaid J. D. to wit, on, &c. he the ſaid plaintiff duly proved the ſaid will of the ſaid J. D. and took upon himſelf the burthen and execution thereof, and thereby then and there became and was (6) poſſeſſed of *and entitled unto the ſaid right of renewal of the ſaid term of twenty-one years and* all (7) other the inter eſt of the ſaid J. D. of and in, or to the ſaid (8) premiſes *ſo to him demiſed as aforeſaid*, with the appurtenances, at the time of his death, *under the aforeſaid indenture of leaſe thereof to him the ſaid J. D.* whereof the ſaid Sir J. S. the ſon, afterwards, to wit, on, &c. at, &c. had notice: And the ſaid plaintiff in fact further ſaith, (9) *he the ſaid plaintiff being ſuch executor to the ſaid J. D. as aforeſaid, and having ſuch right of renewal of ſaid term as aforeſaid, and the ſaid Sir J. S. the ſon being ſo poſſeſſed of the ſaid premiſes ſo to him aſſigned as aforeſaid*, he the ſaid Sir J. S. the ſon, in purſuance of the power or agreement for that purpoſe in the ſaid indenture *of leaſe to the ſaid Sir J. S. the father mentioned*, did, ſix calendar months before the expiration of the firſt fourteen years of the ſaid term of twenty-one years, ſo demiſed to the ſaid Sir J. S. the father as aforeſaid, to wit, on, &c. at, &c. give unto the ſaid plaintiff, as ſuch executor as aforeſaid, notice in writing, that the ſaid Sir J. S. the ſon ſhould and would quit and deliver up poſſeſſion of the ſaid meſſuage or dwelling houſe by the ſaid laſt-mentioned indenture demiſed as aforeſaid, and vacate the remaining part of the term thereby demiſed at Chriſtmas-day then next, according to the power and agreement for that purpoſe in the ſaid laſt-mentioned indenture contained: And the ſaid plaintiff in fact further ſaith, that the ſaid Sir J. S. the ſon having given ſuch notice to determine the ſaid laſt-mentioned leaſe as aforeſaid, the ſaid defendant, as ſuch adminiſtrator as aforeſaid, did, upon ſaid Chriſtmas-day after giving the ſame as aforeſaid, that is to ſay, upon the twenty-fifth day of December 1783, to wit, at, &c. quit and deliver up to the ſaid plaintiff, as ſuch executor as aforeſaid, the poſſeſſion of the ſaid premiſes ſo aſſigned to the ſaid Sir J. S. the ſon, and did then and there vacate and determine the ſaid term of twenty-one years ſo thereof demiſed as aforeſaid, as to the then remaining part of the ſaid term, according to the tenor and effect of the aforeſaid notice, and the *proviſoe* or agreement for that purpoſe in the ſaid laſt-mentioned indenture: And the ſaid plaintiff in fact further ſaith, that the ſaid term for twenty-one years did thereupon accordingly ceaſe and determine; *and although no further leaſe of the ſaid premiſes, ſo demiſed to the ſaid J. D. as aforeſaid, hath as yet been granted by the ſaid T. H yet the ſaid plaintiff, as ſuch executor as aforeſaid, is ſtill entitled to the ſaid renewal of the ſaid term; and the ſaid J. D. in his life time, from the time of the expiration of the ſaid term of twenty-one years ſo to him demiſed as aforeſaid; and the ſaid plaintiff, as ſuch executor as aforeſaid, ſince his death, has always ſince continued and remained tenant to the ſaid T. H. his executors, adminiſtrators, and aſſigns of the aforeſaid demiſed premiſes,*

premiſes, under and by virtue of the ſaid right of renewal and of the ſaid agreement for ſuch further leaſe as aforeſaid, to wit, &c. And *the ſaid plaintiff in fact further ſaith*, that although the ſaid J. D. in his lifetime, and the ſaid plaintiff, ſince the death of the ſaid J. D. have ſeverally performed and fulfilled all things in the ſaid indenture *of demiſe* between the ſaid J. D. and Sir J. S. the father deceaſed, contained on the part and behalf of the ſaid J. D. his executors and adminiſtrators, to be performed and fulfilled; yet proteſting that the ſaid Sir J. S. the ſon, *in his lifetime*, after the ſaid (10) premiſes *by that indenture demiſed ſo* came to him by aſſignment as aforeſaid, and the ſaid defendant, adminiſtrator as aforeſaid, after his death, did not, nor did either of them perform and fulfil any thing in the ſaid indenture contained on the part and behalf of the ſaid Sir J. S. the father and his aſſigns to be performed and fulfilled; in fact the ſaid plaintiff ſaith, that upon the ſaid determination of the ſaid demiſe ſo made to the ſaid Sir J. S. the father as aforeſaid, that is to ſay, upon the ſaid twenty-fifth day of December, A. D. 1783, being the feaſt-day of, &c. at, &c. two hundred and ſixteen pounds of the ſaid yearly rent of ninety-ſix pounds for two years and one quarter of a year of the ſaid term ſo demiſed to the ſaid Sir J. S. the father as aforeſaid, beginning after the (11) *aforeſaid* aſſignment to the ſaid Sir J. S. the ſon, and ending on the day and year laſt aforeſaid, became and were due and owing and payable, and ſtill are in arrear and unpaid to the ſaid plaintiff, as ſuch executor as aforeſaid, contrary to the (12) *tenor* and effect of the ſaid laſt-mentioned indenture, and of the ſaid covenant of the ſaid Sir J. S. the father in that behalf made as aforeſaid, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that the ſaid Sir J. S. the ſon did not, after the ſaid premiſes ſo demiſed to his father, come to him the ſaid Sir J. S. the ſon as aforeſaid, at his own proper coſt and charges, well and ſufficiently ſupport, maintain, ſuſtain, &c. or cauſe to be ſupported, &c. the ſaid meſſuage, &c. with all manner of neceſſary and needful reparations and amendments, pavings, &c. as often as need required, nor were the ſaid premiſes, or any part thereof, left, ſurrrendered, or yielded up unto the ſaid plaintiff as ſuch executor as aforeſaid, at or upon the aforeſaid determination of the ſaid term ſo thereof demiſed to the ſaid Sir J. S. the father as aforeſaid, ſo well and ſufficiently amended, repaired, glazed, &c. according to the tenor and effect of the ſaid indenture, and of the ſaid covenant of the ſaid Sir J. S. the father in that behalf made as aforeſaid, but (13) on the contrary thereof, he the ſaid Sir J. S. the ſon, in his lifetime, after the ſaid premiſes came to him by aſſignment as aforeſaid, and the ſaid defendant, adminiſtrator as aforeſaid, after the death of the ſaid Sir J. S. the ſon, to wit, on, &c. and from thence until the determination of the ſaid term of *twenty-one years* ſo demiſed to the ſaid Sir J. S. the father, as aforeſaid, ſuffered and permitted the ſaid meſſuage, &c. with the appurtenances, to be greatly out of repair, ruinous, and in decay, *for want of neceſſary repairing, amending, paving, and*

glazing thereof, in other and different parts and places than in the roof and tiling thereof, that is to ſay, in the walls, doors, &c. &c. &c. and in various other parts thereof (other than the roof and tiling thereof), and all the pumps, drains, &c. &c. to be foul, filled, and choaked up with ſand, mire, and filth, for want of needful and neceſſary emptying, cleanſing, and ſcouring thereof; and upon and at the aforeſaid determination of the ſaid term ſo thereof demiſed to the ſaid Sir J. S. the father as aforeſaid, he the ſaid defendant, adminiſtrator as aforeſaid, left, ſurrendered, and yielded up the ſaid premiſes unto him the ſaid plaintiff, executor as aforeſaid, ſo out of repair, ruinous, and in great decay as aforeſaid, for want of neceſſary repairing, amending, paving, glazing, and cleanſing thereof, contrary to the (14) *tenor* and effect, true intent and meaning of the ſaid laſt-mentioned indenture, and of the covenant of the ſaid Sir J. S. the father, in that behalf made as aforeſaid, to wit, at, &c. And whereas, before the making the indenture hereinbefore mentioned, to wit, on, &c. at, &c. the ſaid T. H. hereinafter mentioned, demiſed (amongſt other premiſes) the ſaid meſſuage, &c. in the ſaid indenture hereinafter mentioned, with the appurtenances, to the ſaid J. D. deceaſed, his executors, adminiſtrators, and aſſigns, to hold the ſame unto the ſaid J. D. his executors, adminiſtrators, and aſſigns, from the feaſt of, &c. in the ſame year, for one year from thence next enſuing, and fully to be complete and ended, and ſo from year to year, for ſo long a time as it ſhould pleaſe the ſaid T. H. and the ſaid J. D. his executors, adminiſtrators, and aſſigns, by virtue of which ſaid demiſe he the ſaid J. D. entered into the ſaid premiſes ſo to him demiſed as laſt aforeſaid, with the appurtenances, and became and was poſſeſſed thereof, and being ſo thereof poſſeſſed, by a certain other indenture, made at, &c. on, &c. between the ſaid J. D. of the one part, and the ſaid Sir J. S. the father, hereinbefore mentioned, of the other part *(profert in curia)*; he the ſaid J. D. for the conſiderations therein mentioned, did demiſe, ſet, and to farm let unto the ſaid Sir J. S. the father, his adminiſtrators and aſſigns, all that meſſuage, &c. by the ſaid laſt-mentioned indenture demiſed, ſituate in, &c. and in the ſaid laſt-mentioned indenture more particularly mentioned and deſcribed, together with, &c. to have and to hold the ſaid laſt-mentioned meſſuage, &c. with the appurtenances, &c. unto the ſaid Sir J. S. the father, his executors, adminiſtrators, and aſſigns, from the feaſt of, &c. for and during, and unto the full end and term of twenty-one years from thence next enſuing and fully to be complete and ended, ſubject, nevertheleſs, to a *proviſo* or condition thereafter mentioned and expreſſed, for vacating the ſaid term at any of the ſeveral terms thereinafter mentioned, yielding and paying, &c. &c. [as in firſt Count to the end, omitting what is in *italic*, and inſerting in lieu thereof what is in the margin]: And the ſaid plaintiff ſaith, that the ſaid Sir J. S. the ſon, as ſuch aſſignees as aforeſaid, in his lifetime, and the ſaid defendant, as ſuch adminiſtrator as aforeſaid, ſince his death, did not keep, nor hath either of them kept with him the ſaid

(14) "form"

2d Count, alleging the leaſe to have been demiſed under demiſe to him and his executors from year to year, and ſuch demiſe is ſtill exiſting, &c."

ſaid plaintiff, executor as aforeſaid, the covenants ſo made by the ſaid Sir J. S. the father, for himſelf and his aſſigns as aforeſaid, but have broken the ſame, and to keep the ſame with the plaintiff, executor as aforeſaid, have wholly refuſed and neglected, and the ſaid defendant, adminiſtrator as aforeſaid, ſtill refuſes to keep with ſaid plaintiff. Damages four hundred pounds; ſuit, &c. (*profert* of letters teſtamentary); and the ſaid plaintiff prays his majeſty's proceſs to be granted to him the ſaid plaintiff, as ſuch executor as aforeſaid, upon the premiſes, againſt the ſaid defendant, as ſuch adminiſtrator as aforeſaid, according to the form of the ſtatute, &c. and it is granted to him, &c.

G. Wood.

And the ſaid defendant, adminiſtrator as aforeſaid, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that as to the premiſes in the firſt Count of the ſaid declaration in that reſpect, and the matters therein contained, are not ſufficient in law to enable the ſaid plaintiff, as executor as aforeſaid, to have or maintain his aforeſaid action againſt him the ſaid defendant, as adminiſtrator as aforeſaid, to which ſaid declaration in that reſpect, in manner and form as the ſame is above made, the ſaid defendant hath no need, nor is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: wherefore, for want of a ſufficient declaration in this reſpect the ſaid defendant prays judgment if the ſaid plaintiff, as executor as aforeſaid, ought to have or maintain his ſaid action as to the premiſes in the firſt Count of the ſaid declaration mentioned, againſt him, &c. And for cauſe of demurrer in law in this behalf, the ſaid defendant, adminiſtrator as aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided, ſhews to the court here theſe cauſes following, that is to ſay, for that it is not alledged, nor does it appear in or by the (1) *firſt* Count of the ſaid declaration, that the ſaid J. D. deceaſed, in his lifetime, had ſuch intereſt or eſtate of and in the premiſes in the ſaid (2) *firſt* Count of the ſaid declaration ſtated to have been demiſed by him to the ſaid Sir J. S. the father, *therein alſo mentioned*, at the time of making the ſaid indenture of demiſe in that behalf, *in that Count alſo mentioned*, as would or could by law veſt in the ſaid plaintiff, as his executor, ſo as to enable him the ſaid plaintiff, as ſuch executor, to maintain any action of covenant (3) *upon breaches of covenant contained in that indenture*; and alſo for that it is not alledged, nor does it appear in or by the firſt Count of the ſaid declaration, that the ſaid J. D. deceaſed, in his lifetime had ſuch an intereſt or eſtate of and in the ſaid premiſes in the ſaid (4) *firſt* Count of the ſaid declaration mentioned, to have been demiſed *by him* to the ſaid Sir J. S. the father, at the time of making of the ſaid demiſe therein mentioned, as would or could enable him by law to make ſuch demiſe as in the (5) *firſt* Count of the ſaid declaration mentioned; and alſo for that it appears, in and by the ſaid (6) *firſt* Count of the ſaid declaration mentioned, that the

indenture of demiſe in that Count mentioned to have been made between the ſaid J. D. of the one part, and the ſaid Sir J. S. of the other part, was void in law, inaſmuch as the ſaid J. D. demiſed the ſaid premiſes therein mentioned for a longer term than he the ſaid J. D. was poſſeſſed of or entitled unto the ſame; and alſo for that it is not alledged, nor does it appear in or by the ſaid (7) *firſt* Count of the ſaid declaration mentioned, that the ſaid J. D. deceaſed, at the time of his death, had any eſtate, right, title, or intereſt *in law* whatſoever, of and in to the ſaid demiſed premiſes in the ſaid firſt Count of the ſaid declaration men ioned; and alſo for that the ſaid firſt Count of the ſaid declaration is argumentative, in this, that the ſaid plaintiff hath, in and by the ſaid (8) *firſt* Count of his ſaid declaration ſhewn, that he duly proved the will of the ſaid J. D. and took upon himſelf the burthen of the execution thereof, and thereby became and was (9) poſſeſſed of and *entitled unto his ſaid right of renewal therein mentioned*, and all *other* the intereſts of the ſaid J. D. of and in the ſaid premiſes, with the appurtenances, without poſitively alledging or ſhewing that the ſaid J. D. was at the time of his death poſſeſſed of ſuch an eſtate and intereſt in law in the premiſes, as upon his death could by law veſt in the ſaid plaintiff as his executor, for the purpoſe of enabling him the *ſaid plaintiff*, as executor as aforeſaid, to maintain any action of covenant (10) *for the breaches in the Count mentioned*; and alſo for that no material iſſue can be taken upon ſuch argumentative pleading; and alſo for that the ſaid breach of covenant in the ſaid firſt Count firſt above aſſigned is double, in that it joins and attempts to put in iſſue two diſtinct matters, to wit, what rent was due from the ſaid Sir J. S. the ſon in his lifetime, and alſo what rent was due from the ſaid defendant as adminiſtrator as aforeſaid, in the ſame breach; and alſo for that the ſaid breach in the ſaid firſt Count ſecondly above mentioned is double in this, that it joins two diſtinct matters, and attempts to put two diſtinct matters in iſſue, *viz.* whether the ſaid Sir J. S. the ſon in his lifetime repaired the ſaid premiſes *or not*, and alſo whether the ſaid defendant ſurrendered the ſame to the ſaid plaintiff properly repaired or not; and alſo for that the ſaid *ſecond* breach is contradictory and abſurd, in this, that it ſtates that the ſaid Sir J. S. the ſon ſuffered and permitted the ſaid premiſes to be out of repair until the determination of the ſaid term, whereas it appears by (11) *firſt Count* that the ſaid Sir J. S. the ſon was dead before the determination of the ſaid term; and alſo for that the ſaid *firſt Count of the ſaid* declaration is in other reſpects inſufficient, informal, and abſurd, &c.: And the ſaid defendant, adminiſtrator as aforeſaid, as to the ſaid premiſes in the ſecond Count of the ſaid declaration contained, ſays, that the ſaid declaration in that reſpect, and the matter therein contained, are not ſufficient in law, &c. &c. [as the demurrer to the firſt Count, only leaving out what is in *italic* and inſerting what is in the margin.]

(7) "ſecond"

(8) "ſecond"

(9) "and ſuch"

(10) "upon the breach"

(11) "breach,"

WILLIAM BALDWIN.

ESSEX,

ESSEX, to wit. Stephen Brown, late of, &c. yeoman, and Joſeph Rayner, late of, &c. farmer, aſſignees of Joſeph Rayner deceaſed, were ſummoned to anſwer unto William Start, aſſignee of Thomas Kent, in a plea that they the ſaid Stephen and Joſeph Rayner, aſſignees as aforeſaid, keep with him the ſaid William the covenant made between the ſaid Thomas Kent and the ſaid Joſeph Rayner deceaſed, in his lifetime for himſelf and his aſſigns, according to the force, form, and effect of a certain indenture thereof made between the ſaid Thomas Kent and the ſaid Joſeph Rayner deceaſed, in his lifetime; and thereupon the ſaid William, by John Uſher his attorney, complains, that whereas before and at the time of the making of the indenture of leaſe hereafter mentioned to have been made by the ſaid Thomas Kent to the ſaid Joſeph Rayner deceaſed, he the ſaid Thomas Kent was ſeiſed, to wit, in his demeſne as of fee, of and in the ſeveral premiſes by that indenture demiſed, and hereinafter mentioned and deſcribed, and being ſo thereof ſeiſed, by a certain indenture made the twentieth day of May 1765, to wit, at, &c. in, &c. between the ſaid Thomas Kent of the one part, and the ſaid Joſeph Rayner deceaſed, of the other part (the counterpart of which ſaid indenture, ſealed with the ſeal of the ſaid Joſeph Rayner deceaſed, and bearing date the ſame day and year aforeſaid, the ſaid William now brings here into court), the ſaid Thomas Kent, for the conſideration therein mentioned, did demiſe, leaſe, and to farm let unto the ſaid Joſeph Rayner deceaſed, his executors, and adminiſtrators, "All that capital meſſuage called Blackmore-hall, with all and ſingular the houſes, outhouſes, &c. and all the lands, meadows, paſtures, feedings, and appurtenances thereunto belonging, or in any wiſe appertaining, or therewith, then, or there lately uſed, occupied, or enjoyed, or accepted, reputed, or taken as part, parcel, or member thereof, with their and every of their appurtenances, ſituate, lying, and being in, &c. and then in the tenure and occupation of the ſaid Joſeph Rayner deceaſed, his aſſignee, or aſſigns, all which ſaid lands, meadows, paſtures, and feedings did contain together in the whole by common eſtimation, ninety acres, or thereabouts; and alſo all thoſe two tenements theretofore erected and built upon ſome part of the therein and hereinbefore mentioned to be demiſed premiſes, and then in the occupation of the ſaid Joſeph Rayner deceaſed, his aſſignee, or aſſigns, undertenant or undertenants, except and always reſerved out of that then preſent demiſe and leaſe unto the ſaid Thomas Kent, his heirs, and aſſigns, all and all manner of wood, underwood, timber trees, bowlings, and other trees then ſtanding, growing, and being, or which at any time or times thereafter during the continuance of that then preſent demiſe to come, and be, into, and upon the ſaid demiſed premiſes, or any part thereof, with free liberty of ingreſs, egreſs, and regreſs, to and for the ſaid Thomas Kent, his heirs, and aſſigns, and his and their ſervants and workmen with horſes, carts, and carriages, and by and with all other uſual ways and means, from time to time, and at all ſeaſonable times in the year during

the continuance of that then preſent demiſe to come, and be, into, and upon the ſaid demiſed premiſes, or any part thereof, to fell and ſtubble down, ſaw, take, and carry away all ſuch and ſo much of the ſaid wood, &c. as he or they ſhould think fit, doing thereby as little damage to the ſaid Joſeph Rayner, his executors, adminiſtrators, and aſſigns, in his and their corn and graſs as convenient might be; to have and to hold the ſaid capital meſſuages, lands, meadows, paſtures, tenements, hereditaments, and all and ſingular the premiſes therein and hereinbefore mentioned and intended to be thereby demiſed, with their and every of their appurtenances (except as before excepted), unto the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, and aſſigns, from the feaſt-day of St. Michael the Archangel, then next enſuing the date thereof, for and during and unto the full end and term of twenty-one years from thence next enſuing, and fully to be complete and ended, yielding and paying therefore yearly, and every year, during the ſaid term thereby granted unto the ſaid Thomas Kent, his heirs, executors, adminiſtrators, and aſſigns, the yearly rent or ſum of ſixty pounds of lawful money of Great Britain, at the two moſt uſual feaſt-days or days of payment in the year (that is to ſay), the feaſt-day of the Annunciation of the bleſſed Virgin Mary, and St. Michael the archangel, by even and equal portions; and the ſaid Joſeph Rayner, deceaſed, for himſelf, his executors, adminiſtrators, and aſſigns, did covenant, promiſe, and grant to and with the ſaid Thomas Kent, his heirs, and aſſigns, by the ſaid indenture in manner and form following (that is to ſay), that he the ſaid Joſeph Rayner, laſtly above named, his executors, adminiſtrators, and aſſigns, or ſome or one of them, ſhould and would yearly, and every year, during the continuance of that then preſent demiſe, well and truly pay, or cauſe to be paid unto the ſaid Thomas Kent, his heirs, or aſſigns, the aforeſaid rent or ſum of ſixty pounds, at ſuch times and in ſuch manner as was therein before appointed for payment thereof, according to the true intent and meaning of the ſaid indenture, and that he the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, and aſſigns, at his or their proper coſts and charges, ſhould and would from time to time during the continuance of that demiſe; ſo often as need ſhould require, well and ſufficiently repair, amend, maintain, and keep the ſaid meſſuages, outhouſes, &c. and all and ſingular the premiſes, in, by, and with all and all manner of needful, neceſſary, and tenantable reparations and amendments whatſoever; and likewiſe ſhould and would well and ſufficiently repair, amend, maintain, and keep all and ſingular the hedges, fences, bars, pales, gates, banks, rails, and ſtiles in and about the ſaid demiſed premiſes, and the ponds, water courſes, and ditches there, ſhould and would, from time to time, in an huſbandlike manner well and ſufficiently cleanſe and ſcour, laying two ſpits of earth upon the bank where ſuch ditches ſhould be ſcoured, for the preſervation of the quick growing there, and the ſaid meſſuages, outhouſes, &c. with the bars, keys, locks, ſtaples, and glaſs windows of the ſame,

ſame, which then were, or thereafter during the continuance of that then preſent demiſe ſhould be thereunto made or belonging, and the ſaid hedges, fences, gates, bars, rails, and ſtiles being ſo well and ſufficiently repaired, amended, maintained, fenced, hedged, incloſed, and kept, and the ſaid ponds, water courſes, and ditches well and ſufficiently cleaned and ſcoured, at the end, expiration, or other ſooner determination of that then preſent demiſe, ſhould and would peaceably and quietly have and yield up unto the ſaid Thomas Kent, his heirs, and aſſigns; and that he the ſaid Joſeph Rayner, deceaſed, his executors, adminiſtrators, or aſſigns, ſhould not nor would during the ſaid term take above two crops of any corn or grain together upon any of the lands thereby demiſed, but ſhould, and would, after two crops taken, well and ſufficiently, and in a huſbandlike manner fallow and ſummer-till the ſame; and at the end, or other ſooner determination, ſhould and would yield and deliver up unto the ſaid Thomas Kent, his heirs, or aſſigns, twenty-three acres of the premiſes thereby demiſed in fallow, well and ſufficiently and at all ſeaſonable times plowed, and fit for ſeed, he the ſaid Thomas Kent, his heirs, or aſſigns, allowing and deducting out of the rent which ſhould be due for the premiſes unto the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, or aſſigns, the ſum of four ſhillings and ſix-pence an acre for every whole tilth, and two ſhillings and ſix-pence an acre for every half tilth, and ten ſhillings an acre for the rent of the ſaid fallow: and further, that he the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, and aſſigns, ſhould and would yearly, and every year during the ſaid term, expend upon the ſaid demiſed premiſes all ſuch ſtover as ſhould ariſe or grow thereupon, except the wheat ſtraw, for every load whereof which he or they ſhould ſell, he or they ſhould bring, lay, and beſtow upon the ſaid demiſed premiſes two loads of dung alſo, and alſo ſhould carry on, lay, ſpread, and beſtow in and upon the moſt needful places of the ſaid demiſed premiſes, all the dung, muck, manure, and compoſt ariſing upon the ſaid demiſed premiſes during the ſaid term (except the laſt year of the ſaid term), and at the end of the ſaid term ſhould leave all the dung and muck ariſing upon the ſaid premiſes the laſt year of the ſaid term, he the ſaid Thomas Kent, his heirs, and aſſigns, allowing and paying unto him or them for the ſaid muck and dung ſo left the laſt year the ſum of one ſhilling a load; and moreover, that he the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, and aſſigns, ſhould not, nor would at any time during the ſaid term, fell, ſaw, cut down, top, or lop any of the timber trees, bowlings, and other trees then growing and being upon the ſaid demiſed premiſes (except the lops and tops of the ſaid bowlings for his and their needful and neceſſary firing, to be had and taken in an huſbandlike manner, and not otherwiſe, and to be ſpent upon the ſaid demiſed premiſes, and not elſewhere); and that he the ſaid Joſeph Rayner deceaſed, his executors, adminiſtrators, and aſſigns, when and ſo often as he or they ſhould cut any quick hedge upon any part of the ſaid demiſed premiſes, he or

they ſhould ſcour the ditch belonging to the ſaid hedge, and lay two ſpits of earth upon the bank thereof for the nouriſhment of the ſaid quick, and ſhould preſerve the ſaid quick as much as in either of them laid, as by the ſaid indenture, reference being thereto had, will, amongſt other things, more fully and at large appear; by virtue of which ſaid demiſe the ſaid Joſeph Rayner deceaſed, in his lifetime, to wit, on the twenty-ninth day of September 1765, entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and was poſſeſſed thereof for the ſaid term ſo to him thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances belonging unto the ſaid Charles Kent, his heirs, and aſſigns, and the ſaid reverſion being ſo belonging as aforeſaid, afterwards, to wit, on the ſixth day of April 1780, at, &c. in, &c. by a certain indenture of bargain and ſale then and there made between the ſaid Charles Kent of the one part, and the ſaid William Start of the other part (one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal of the ſaid Charles Kent, he the ſaid William Start now brings into court here, the date whereof is the ſame day and year laſt aforeſaid), the ſaid Charles Kent, for the conſiderations therein mentioned, bargained and ſold unto the ſaid William Start the ſaid reverſion, with the appurtenances, of and in the ſaid demiſed premiſes with the apurtenances, to have and to hold the ſame, with the appurtenances, unto the ſaid William Start, his executors, adminiſtrators, and aſſigns, from the day next before the day of the date of the ſaid indenture of bargain and ſale, for and during and unto the full end and term of one whole year then next enſuing, and fully to be complete and ended, as by the ſaid indenture of bargain and ſale, relation being thereto had, may more fully appear." By virtue of which ſaid indenture of bargain and ſale, and by force of the ſtatute made for transferring of uſes into poſſeſſion, the ſaid William Start became and was poſſeſſed of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, for the ſaid term ſo to him thereof granted as aforeſaid, the further reverſion thereof, with the appurtenances belonging to the ſaid Charles Kent, and being ſo thereof poſſeſſed, and the ſaid further reverſion thereof, with the appurtenances belonging as aforeſaid, afterwards, to wit, on the ſeventh of April 1780, at, &c. in, &c. by a certain indenture of releaſe then and there made between the ſaid Charles Kent of the one part, and the ſaid William Start of the other (the one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal or the ſaid Charles Kent, he the ſaid William Start now brings into court here, the date whereof is the ſame day and year laſt aforeſaid), the ſaid Charles Kent, for the conſiderations therein mentioned, releaſed the ſaid further reverſion, with the appurtenances, of and in the ſaid demiſed premiſes, with the appurtenances, to the ſaid William Start, to have and to hold the ſame unto the ſaid William Start, his heirs, and aſſigns, to the uſe and and behoof of him the ſaid William Start, his heirs, and aſſigns for ever, as by the ſaid indenture of releaſe (relation being thereunto

unto had, may more fully appear), by means whereof the ſaid William Start became and was and from thence hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee, of and in the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, to wit, at, &c. in, &c.; and the ſaid William Start being ſo thereof ſeiſed, afterwards, and before the end and expiration of the ſaid demiſed term, to wit, on the firſt of January 1785, at, &c. in, &c. all the eſtate, right, title, term of years then to come and unexpired, property, intereſt, claim, and demand whatſoever of him the ſaid Joſeph Rayner deceaſed, of and in to the ſaid demiſed premiſes, with the appurtenances, by aſſignment thereof then and there legally made, came to and veſted in the ſaid Stephen Brown and Joſeph Rayner the defendants; by virtue whereof they the ſaid Stephen Brown and Joſeph Rayner afterwards, to wit, on, &c. entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and were poſſeſſed thereof for the reſidue of the ſaid term ſo demiſed as aforeſaid then to come and unexpired, and remained and continued ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, from thence until the end and expiration of the ſaid demiſed term: And although the ſaid William Start hath always from the time of his becoming ſo ſeiſed of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, until the end and determination of the ſaid demiſed term of twenty-one years, well and duly performed and fulfilled all and ſingular the covenants, matters, and things contained in the ſaid indenture of leaſe ſo made between the ſaid Thomas Kent and the ſaid Joſeph Rayner deceaſed, on the part and behalf of the ſaid Thomas Kent, and his aſſigns, to be done and performed according to the force, form, and effect of the ſaid indenture, to wit, at, &c. in, &c.; yet proteſting that the ſaid Stephen Brown and Joſeph Rayner, the defendants, after the ſaid aſſignment ſo to them made as aforeſaid, did not perform or fulfil any thing in the aforeſaid indenture of leaſe contained on the part and behalf of the ſaid Joſeph Rayner deceaſed, and his aſſigns, to be done and performed; the ſaid William Start in fact ſaith, that although after he the ſaid William Start ſo became ſeiſed of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, and after the ſaid aſſignment ſo made to the ſaid Stephen Brown and Joſeph Rayner, the defendants as aforeſaid, and before the expiration of the ſaid demiſed term of twenty-one years, that is to ſay, on the twenty-ninth day of September, 1786, at, &c. in, &c. a large ſum of money, to wit, the ſum of thirty pounds of the ſaid yearly rent of ſixty pounds, in and by the aforeſaid indenture of leaſe ſo reſerved for the laſt half year of the ſaid term ſo thereby demiſed as aforeſaid, became and was then and there due, owing, and payable from, and ought to have been then and there paid by them the ſaid Stephen Brown and Joſeph Rayner, the defendants, to the ſaid William Start; yet they the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not then pay, or cauſe to be paid unto him the ſaid William Start, the ſaid ſum of money ſo then

and

and there due, owing, and payable for ſuch rent as aforeſaid, but omitted and neglected ſo to do, and ſuffered and permitted the ſame to become and be, and the ſame ſtill is in arrear, owing, and unpaid to him the ſaid William Start, contrary to the form and effect of the ſaid indenture of leaſe, and of the covenants of the ſaid Joſeph Rayner deceaſed, in that behalf made as aforeſaid, to wit, at, &c. in, &c.; and the ſaid William Start in fact further ſaith, that whilſt he was ſo poſſeſſed of, and in the ſaid reverſion of and in the ſaid demiſed premiſes as aforeſaid, and after the ſaid aſſignment ſo made to the ſaid Stephen Brown and Joſeph Rayner, the defendants as aforeſaid, and whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, and during the continuance of the ſaid demiſe, to wit, on, &c. in, &c. the ſaid demiſed meſſuages, &c. were ruinous, out of repair, and in decay, to wit, in the walls, beams, timbers, tilings, ſlatings, thatchings, and coverings thereof, and in the floors, ſtairs, ſtair-caſes, ceilings, wainſcottings, doors, door-caſes, windows, window frames thereof, and in various other parts and particulars thereof, for want of needful and neceſſary repairing and amending thereof, and all and ſingular the hedges, &c. in and about the ſaid demiſed premiſes, and of and belonging to the ſame were ruinous, proſtrate, broken down, rotten, and in great decay for want of needful and neceſſary repairing and amending thereof, and all and ſingular the ponds, ditches, drains, and water courſes in and of and belonging to the ſaid demiſed premiſes, were filled and choaked up with mud, filth, mire, dirt, and rubbiſh, for want of needful and neceſſary ſcouring and cleanſing thereof; and the ſaid ſeveral premiſes ſo being ruinous, out of repair, and in great decay, choaked up, ſtopped up, and obſtructed for want of needful and neceſſary repairing and ſcouring thereof, they the ſaid Stephen Brown and Joſeph Rayner, the defendants as aforeſaid, ſuffered and permitted the ſame to be and continue ſo ruinous, out of repair, and in decay, choaked up, ſtopped up, and obſtructed as aforeſaid, from thence until the end and expiration of the ſaid demiſed term, and then, that is to ſay, at the end and expiration of the ſaid term, left and yielded up the ſaid demiſed premiſes, with the appurtenances, to the ſaid William Start ſo ruinous, out of repair, and in decay, foul, choaked up, ſtopped up, and obſtructed as aforeſaid, contrary to the tenor and effect of the ſaid indenture of leaſe between the ſaid Thomas Kent and the ſaid Joſeph Rayner deceaſed, and of the covenant of him the ſaid Joſeph Rayner deceaſed, in that behalf made as aforeſaid, to wit, at, &c. in, &c. whereby the ſaid William Start was and hath been neceſſarily forced and obliged to lay out and expend, and hath laid out and expended a large ſum of money, to wit, the ſum of two hundred pounds, in and about the repairing of the ſaid demiſed premiſes, with the appurtenances, to wit, at, &c. in, &c.; and the ſaid William Start in fact further ſaith, that whilſt he was ſo ſeiſed of and in the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, whilſt the ſaid Stephen Brown and Joſeph Rayner,

Rayner, the defendants, were ſo poſſeſſed of the ſaid demiſed premiſes, under and by virtue of the aforeſaid aſſignment thereof, and during the continuance of the ſaid demiſed term, that is to ſay, in the years 1785, or 1786, they the ſaid Stephen Brown and Joſeph Rayner, the defendants, did take above two crops of corn and grain together, to wit, three crops ſucceſſively of corn and grain upon a great part, to wit, fifty acres of the ſaid land, by the ſaid indenture of leaſe between the ſaid Thomas Kent and the ſaid Joſeph Rayner deceaſed, deviſed as aforeſaid, contrary to the tenor and effect of the ſaid indenture, and of the covenant of him the ſaid Joſeph Rayner deceaſed, in that behalf; and although the ſaid Stephen Brown and Joſeph Rayner, the defendants, in each of thoſe years, that is to ſay, in the ſaid years 1785 and 1786, in other parts of the ſaid demiſed land, took and had two crops of corn and grain; yet the ſaid William in fact further ſaith, that the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not, after ſuch two crops ſo by them had and taken as laſt aforeſaid, well and ſufficiently, and in an huſbandlike manner, fallow and ſummer-till the land from whence ſuch crops were ſo taken, but omitted and neglected ſo to do, contrary to the tenor and effect of the aforeſaid indenture of leaſe, and of the covenant of the ſaid Joſeph Rayner deceaſed, in that behalf, to wit, at, &c. in, &c. whereby the ſaid lands ſo then cropped, and omitted to be fallowed and ſummer-tilled as aforeſaid, became and were very much impoveriſhed and injured; and the ſaid William Start in fact further ſaith, the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not, at the end and determination of the aforeſaid demiſed term, leave and yield up to the ſaid William twenty-three acres of the ſaid demiſed premiſes in fallow, well and ſufficiently and at all ſeaſonable times ploughed and fit for ſeed; although he the ſaid William was then and there ready and willing to allow and deduct out of the rent, then due for the ſaid demiſed premiſes, unto the ſaid Stephen Brown and Joſeph Rayner, the defendants, the ſum of four ſhillings and ſixpence an acre for every whole tilth, and two ſhillings and ſixpence per acre for every half tilth, and ten ſhillings an acre for the rent of the ſaid fallow, but omitted and neglected ſo to do, and therein failed and made default, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid Joſeph Rayner deceaſed, in that behalf, to wit, at, &c. in, &c.; and the ſaid William in fact further ſaith, that the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not by yearly and every year during the ſaid demiſed term, whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes by virtue of the aforeſaid aſſignment thereof, and whilſt he the ſaid William was ſo ſeiſed of and in the ſaid reveNion in the ſame as aforeſaid, expend upon the ſaid demiſed premiſes all ſuch ſtover as aroſe and grew thereupon (except the wheat ſtraw), nor carry or lay, ſpread, or beſtow in and upon the moſt needful places of the ſaid demiſed premiſes, all the dung, muck, manure, and compoſt ariſing upon the ſaid demiſed premiſes during the time laſt aforeſaid,

ſaid, except the laſt year of the ſaid demiſed term, nor at the end of the ſaid term leave all the dung and muck ariſing upon the ſaid demiſed premiſes the laſt year of the ſaid term, although he the ſaid William was then and there ready and willing to pay and allow to them the ſaid Stephen Brown and Joſeph Rayner, the defendants, for the ſaid muck and dung ſo left the laſt year of the ſaid demiſed term, the ſum of one ſhilling a load, but omitted and neglected ſo to do, and on the contrary thereof, the ſaid William ſaith, that they the ſaid Stephen Brown and Joſeph Rayner, the defendants, during the continuance of the ſaid demiſed term, and whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, and whilſt the ſaid William was ſo ſeiſed of and in the ſaid reverſion of and in the ſaid demiſed premiſes as aforeſaid, without the conſent of him the ſaid William, took and carried away from and off the ſaid demiſed premiſes, divers large quantities, to wit, one hundred cart loads of ſtover, which during that time aroſe and grew thereupon, and alſo took and carried away from and of the ſaid demiſed premiſes, divers large quantities of dung, muck, manure, and compoſt, to wit, one hundred cart loads of manure, and one hundred cart loads of compoſt which aroſe upon the ſaid demiſed premiſes during the time laſt aforeſaid, and not in the laſt year of the ſaid demiſed term, and ſpent, laid, ſpread, and beſtowed, and diſpoſed of the ſame elſewhere, and otherwiſe than on then ſaid demiſed premiſes, or on any part thereof, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid Joſeph Rayner deceaſed, in that behalf, and although the ſaid Stephen Brown and Joſeph Rayner, the defendants, whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, and whilſt the ſaid William was ſo ſeiſed of and in the ſaid reverſion as aforeſaid, ſold and diſpoſed of divers large quantities, to wit, one hundred cart loads of wheat ſtraw, which during that time aroſe and grew upon the ſaid demiſed premiſes, to wit, at, &c. in, &c.; yet they the ſaid Stephen Brown and Joſeph Rayner did not, for every load of the ſaid wheat ſtraw which they ſo ſold and diſpoſed of, bring, lay, and beſtow upon the ſaid demiſed premiſes two loads of dung, but therein wholly failed and made default, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid Joſeph Rayner deceaſed; and the ſaid William in fact further ſaith, that the ſaid Stephen Brown and Joſeph Rayner, the defendants, during the continuance of the ſaid demiſed term, and whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, and whilſt the ſaid William was ſo ſeiſed of and in the ſaid reverſion as aforeſaid, did fell, ſaw, cut down, top, and lop a large quantity of the timber trees, bowlings, and other trees, to wit, five hundred timber trees, five hundred bowlings, and five hundred other trees then growing and being upon the ſaid demiſed premiſes, other and beſides the lops and tops of the ſaid bowlings for their needful and neceſſary firing, had and taken in an huſbandlike manner, to be ſpent upon the

the ſaid demiſed premiſes; and although they the ſaid Stephen Brown and Joſeph Rayner, the defendants, during the time laſt aforeſaid, cut, lopped, and topped certain of the bowlings growing in and upon the ſaid demiſed premiſes, for and under pretence of ſuch firing; yet they the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not ſpend the loppings, toppings, and cuttings of the ſaid laſt-mentioned bowlings upon the ſaid demiſed premiſes, according to the form and effect of the aforeſaid indenture of leaſe, but on the contrary ſpent and diſpoſed of the ſame elſewhere, and otherwiſe than on the ſaid demiſed premiſes, to wit, at, &c. in, &c. contrary to the tenor and effect of the ſaid indenture, and of the covenant of the ſaid Joſeph Rayner deceaſed in that behalf: And the ſaid William in fact further ſaith, that although the ſaid Stephen Brown and Joſeph Rayner, the defendants, after the ſaid aſſignment ſo to them made as aforeſaid, and whilſt they were ſo poſſeſſed of the ſaid demiſed premiſes as aforeſaid, and whilſt the ſaid William was ſo ſeiſed of and in the ſaid reverſion as aforeſaid, did frequently cut divers of the quick hedges of the ſaid demiſed premiſes, having ditches belonging to the ſame plaintiff, they the ſaid Stephen Brown and Joſeph Rayner, the defendants, did not, when and ſo often as they cut the ſaid quick-hedges, ſcour the ſaid ditches ſo thereto belonging as aforeſaid, or either of them, lay two ſpits of earth upon the banks thereof reſpectively, for the nouriſhment of the ſaid quicks, nor did they the ſaid Stephen Brown and Joſeph Rayner preſerve the ſaid quicks as much as in them lay, but omitted and neglected ſo to do, and on the contrary thereof wrongfully, wilfully, and negligently ſuffered and permitted the ſame to be and become proſtrate, choken down, out of repair, and in decay, contrary to the tenor and effect of the aforeſaid indenture of leaſe, and of the covenant of the ſaid Joſeph Rayner deceaſed in that behalf, whereby the lands which ſuch quicks and hedges belonged and appertained, and which were thereby formerly incloſed and ſeparated from each other, became and were laid open, and in conſequence thereof the ſaid William was forced and obliged to, and did lay out and expend a large ſum of money, to wit, the ſum of one hundred pounds, in and about the repairing and making good of ſuch hedges and fences, to wit, at, &c. in, &c.; and ſo the ſaid William ſaith, that the ſaid Stephen Brown and Joſeph Rayner have not ſince the ſaid aſſignment ſo to them made as aforeſaid (although often requeſted), kept the ſaid covenant ſo made by the ſaid Joſeph Rayner deceaſed, for himſelf and his aſſigns, with the ſaid Thomas Kent and his aſſigns, but have broken the ſame, and to keep the ſame with him the ſaid William have wholly neglected and refuſed, and ſtill refuſe ſo to do, to wit, at, &c. in, &c.; wherefore the ſaid William ſaith, that he is injured, and hath ſuſtained damage to the value of three hundred pounds, and therefore he brings his ſuit, &c. V. Lawes.

SURRY,

Declaration covenant by administrator *cum testamento annexo*, and legatee of a reverſion, and as aſſignee in the ſecond degree, of the reverſion of a chattel intereſt, againſt the aſſignee of a leſſee, for rent accrued during their reſpective poſſeſſions.

SURRY, to wit. Sarah Sheffard, aſſignee of William Sheffard (which ſaid William Sheffard was aſſignee of Edward Evans and John Adams), complains of James Curry, aſſignee of Cornelius Buſby, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, of a plea of breach of covenant: for that whereas the ſaid Edward Evans and John Adams heretofore, to wit, on the twenty-ſecond day of January, in the year of Our Lord 1790, to wit, at Croydon in the county of Surry, were lawfully poſſeſſed of the premiſes hereafter mentioned to be demiſed, with the appurtenances, for the reſidue of a certain term of years, to wit, a term of eighty-ſeven years, commencing from the feaſt-day of St. Michael the Archangel, which was in the year of Our Lord 1789; and being ſo poſſeſſed thereof by a certain indenture made the twenty ſecond day of January in the year of Our Lord 1790, to wit, at Croydon aforeſaid, in the county aforeſaid, between the ſaid Edward Evans and John Adams of the one part, and the ſaid Cornelius Buſby of the other part (the counterpart of which ſaid indenture, ſealed with the ſeal of the ſaid Cornelius Buſby, the ſaid Sarah now brings here into court, the date whereof is the day and year laſt aforeſaid), they the ſaid Edward Evans and John Adams, for the conſiderations therein mentioned, did, and each of them did demiſe, leaſe, and to farm let to the ſaid Cornelius Buſby, his executors, adminiſtrators, and aſſigns, all that piece or parcel of ground ſituate, lying and being on the ſouth-ſide of Union-ſtreet in the pariſh of St. Mary, Lambeth, containing in length, from eaſt to weſt, along the ſouth-ſide of Union-ſtreet aforeſaid, one hundred and ſixty-five feet of aſſize, little more or leſs, and from north to ſouth ninety feet of aſſize, little more or leſs, and abutting north on Union-ſtreet aforeſaid, ſouth, on ground belonging to Samuel Swabey, eſquire; eaſt, on a new way or road intended to be called ; and weſt, on a new way or road intended to be called ; together with all the meſſuages or tenements intended to be erected and built thereon, and all and ſingular other the appurtenances thereunto belonging, and all ways, watercourſes, lights, eaſements, commodities, profits, emoluments, advantages, and appurtenances whatſoever to the ſaid piece or parcel of ground belonging or in any wiſe appertaining, to hold the ſaid *demiſed premiſes*, with the appurtenances, to the ſaid Cornelius Buſby and his aſſigns, from the feaſt-day of the nativity of St. John the Baptiſt then laſt paſt, for the term of eighty-ſeven years then next enſuing, yielding and paying therefore for the firſt year of the ſaid term to the ſaid Edward Evans and John Adams, or their aſſigns, one pepper-corn, and yielding and paying therefore yearly, and every year during the remainder of the ſaid term the ſum of forty-one pounds of lawful money of Great Britain, upon the four moſt uſual days for payment of rent in the year, that is to ſay, the feaſt of St. Michael the Archangel, the birth of Our Lord Chriſt, the annunciation of the Bleſſed Virgin Mary, and the Nativity of St. John the Baptiſt, by even and

equal portions, the firſt payment thereof to begin and be made on the feaſt-day of St. Michael the Archangel then next enſuing the date thereof, and the ſaid Cornelius Buſby, for himſelf and his aſſigns, did, by the ſaid indenture of leaſe (amongſt other things), covenant, promiſe, and agree, to and with the ſaid Edward Evans and John Adams and their aſſigns, that the ſaid Cornelius Buſby, or his aſſigns, or ſome or one of them, ſhould and would yearly, and every year during the aforeſaid term, well and truly pay, or cauſe to be paid to the ſaid Edward Evans and John Adams, or their aſſigns, the ſaid yearly rent or ſum of forty-four pounds on the days and times, and in manner and form before-mentioned for payment thereof, as by the ſaid indenture, relation being thereto had, will amongſt other things more fully appear; by virtue of which ſaid demiſe the ſaid Cornelius Buſby entered into the ſaid demiſed premiſes, with the appurtenances, and was poſſeſſed thereof for the ſaid term ſo to him thereof granted, the reverſion of the ſaid demiſed premiſes, with the appurtenances, belonging to the ſaid Edward Evans and John Adams; and the ſaid Cornelius Buſby being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, and the ſaid reverſion thereof belonging to the ſaid Edward Evans and John Adams as aforeſaid, they the ſaid Edward Evans and John Adams afterwards, to wit, on the eighth day of April, in the year of Our Lord 1794, to wit, at Croydon aforeſaid, in the county aforeſaid, by a certain indenture of aſſignment then and there made between the ſaid Edward Evans and John Adams of the one part, and the ſaid William Sheffard of the other part (which ſaid laſt-mentioned indenture, ſealed with the ſeals of the ſaid Edward Evans and John Adams, the ſaid Sarah now brings into court here, the date whereof is the day and year laſt-mentioned), they the ſaid Edward Evans and John Adams, for the conſiderations therein mentioned, did grant, bargain, ſell, aſſign, transfer, and ſet over unto the ſaid William Sheffard, his executors, adminiſtrators, and aſſigns (amongſt other premiſes), all that the ſaid reverſion of the ſaid demiſed premiſes, together with the ſaid indenture, to hold the ſame aſſigned premiſes, with the appurtenances, to the ſaid William Sheffard, his executors, adminiſtrators, and aſſigns, from the feaſt-day of the Annunciation of the Bleſſed Virgin Mary then laſt paſt, for the remainder unexpired of the ſaid term of the ſaid Edward Evans and John Adams therein (as by the ſaid laſt-mentioned indenture of aſſignment appears); by virtue whereof the ſaid William Sheffard became and was, and until the time of his deceaſe, continued poſſeſſed of the ſaid reverſion of and in the ſaid demiſed premiſes: And the ſaid Sarah in fact further ſaith, that the ſaid William Sheffard being ſo poſſeſſed of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, afterwards and during the continuance of the ſaid term, to wit, on the ſixteenth day of November, in the year of Our Lord 1791, to wit, at Croydon aforeſaid, in the county aforeſaid; and the ſaid William Sheffard made and publiſhed his laſt will and teſtament in writ-

writing, and thereby gave and bequeathed the ſaid reverſion of the ſaid demiſed premiſes, with the appurtenances, to the ſaid Sarah; and afterwards, to wit, on the firſt day of December, in the year of Our Lord 1791, at Croydon aforeſaid, in the county aforeſaid, the ſaid William Sheffard departed this life without altering or revoking his ſaid will: And the ſaid Sarah in fact further ſays, that afterwards, to wit, on the twenty-ſixth day of April, in the year of Our Lord 1792, at Croydon aforeſaid, in the county aforeſaid; that the ſaid William Sheffard not having appointed any executor to his ſaid will, adminiſtratrix of the goods, chattels, and credits which were of the ſaid William Sheffard (with his will annexed), was by John, by Divine Providence archbiſhop of Canterbury, primate of all England, and metropolitan, to whom the granting thereof belonged, granted to the ſaid Sarah, by virtue whereof ſhe the ſaid Sarah afterwards, to wit, on the day and year laſt aforeſaid, at Croydon aforeſaid, in the county aforeſaid, entered into the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, and became and was, and from thence hitherto hath been, and ſtill is poſſeſſed thereof for the reſidue of the ſaid term of eighty-ſeven years then to come and unexpired therein, (and the ſaid Sarah brings here into court the ſaid letters of adminiſtration of the ſaid archbiſhop, with the will annexed, which ſufficiently prove the granting thereof in form aforeſaid, the date whereof is the day and year laſt aforeſaid: And the ſaid Sarah further ſays, that the ſaid Cornelius Buſby being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, for the ſaid term ſo to him thereof demiſed, during the continuance of the ſaid term, to wit, on the day of , at Croydon aforeſaid, in the county aforeſaid, all the eſtate and intereſt of the ſaid Cornelius Buſby of and in the ſaid demiſed premiſes, came to and veſted in the ſaid James Corrie by aſſignment thereof, and he the ſaid James Corrie then and there entered into and upon all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof: And the ſaid Sarah in fact further ſays, that although afterwards, from the death of the ſaid William Sheffard, and after ſhe became poſſeſſed of the ſaid reverſion of the ſaid demiſed premiſes, and whilſt the ſame remained in the occupation of the ſaid James Corrie, ſhe the ſaid Sarah hath well and truly performed and fulfilled all things in the ſaid firſt-mentioned indenture of leaſe contained on the part and behalf of the ſaid leſſors and their aſſigns to be performed, according to the true intent and meaning thereof, to wit, at Croydon aforeſaid, in the county aforeſaid; yet proteſting that the ſaid James Corrie, ſince the aſſignment ſo made to him of the ſaid demiſed premiſes as aforeſaid, hath not performed or fulfilled any thing in the ſaid indenture of leaſe contained on his part and behalf, as ſuch aſſignee as aforeſaid, to be performed and fulfilled: the ſaid Sarah in fact ſays, that on the twenty-fifth day of December, in the year of Our Lord 1795, at Croydon aforeſaid, in the county aforeſaid, pounds of the rent aforeſaid, for two years

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heffard?

and three-quarters of another year of the ſaid term, ending on the day and year laſt aforeſaid, became due and payable from the ſaid James Corrie to the ſaid Sarah, according to the form and effect of the ſaid indenture of leaſe, and of the ſaid covenant of the ſaid Cornelius Buſby therein, for himſelf and his aſſigns in that behalf made as aforeſaid; yet the ſaid James Corrie (although often requeſted) hath not paid the ſaid rent, or any part thereof, to the ſaid Sarah, but hath therein wholly failed and made default, contrary to the form and effect of the ſaid indenture of leaſe, and of the ſaid covenant of the ſaid Cornelius Buſby for himſelf and his aſſigns in that behalf made as aforeſaid, to the damage of the ſaid Sarah of pounds, for which ſhe brings ſuit, &c. Pledges to proſecute John Doe and Richard Roe.

The facts of this caſe are not a little complicated, but I think I have ſufficiently collected from the deeds and papers before me, that *all the rent* for which the action is brought accrued due after the death of William Sheffard; if ſo, I am of opinion that Mrs. Sarah Sheffard, his widow, muſt ſue as his aſſignee, which ſhe is in conſtruction of law, whether ſhe takes the rent, after it is recovered, as adminiſtratrix, with the will annexed, during widowhood, or in her own right, as legatee of the reverſion under the will, (which, however, does not ſufficiently appear from my inſtructions)

The receiver appointed by the court of chancery will, I think, be entitled, on a previous application to the chancellor's orders for that purpoſe, to ſue in this action in Mrs. Sheffard's name without her expreſs conſent, but he muſt ſue in her name, and can't ſue in his own as ſuch receiver; for as receiver in chancery he has no legal title, Pitt *v.* Snowden, 3. Atk. 350.

Preſuming ſtill that Mrs. Sheffard is legatee of the reverſion, as well as adminiſtratrix with the will annexed (but if it is otherwiſe, I muſt be furniſhed with the letters of adminiſtration), I have altered the declaration (from the form in which it was originally conceived, at her ſuit, as adminiſtratrix during widowhood, with the will annexed), ſtating the action to be at her ſuit, and her to be aſſignee in her own right; ſo that in its preſent form the action is in her name, as aſſignee in the ſecond degree of the reverſion of a chattel intereſt againſt the aſſignee of the leſſee, for rent accrued during their reſpective poſſeſſions.

THO. BARROW.

Declaration in covenant, aſſignee of leſſor againſt aſſignee of leſſee for rent and for ſuffering premiſes to be out of repair.

YORKSHIRE, to wit. William Weddell, eſquire, aſſignee of Mary Greville, complains of James Sunglehurſt and Alice his wife, which ſaid Alice is adminiſtratrix of all and ſingular the goods and chattels, rights and credits which were of R. S. deceaſed, who died inteſtate, being, &c. in a plea of breach of covenant: for that whereas before and at the time of the making of the indenture of leaſe hereafter mentioned to have been made by the ſaid M. G. to the ſaid R. S. the ſaid M. G. was ſeiſed in her demeſne as of fee, of and in the ſeveral premiſes hereafter mentioned, to have been demiſed by the ſaid M. G. to the ſaid R. S.; and being ſo thereof ſeiſed by a certain indenture made, the eighth day of, &c. at, &c. in, &c. between the ſaid M. G. of the one part, and the ſaid R. S. of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid R. S. he the ſaid plaintiff now brings into court here, the date whereof is the day and year aforeſaid), ſhe the ſaid M. G. for the conſiderations therein mentioned, did demiſe, grant, ſet, and to farm-let unto the ſaid R. S.

R. S. " all that dwelling-houſe, ſtables, turf-houſe, and garden, ſituate, lying and being in Toſſido aforeſaid, with the appurtenances thereunto belonging, and all and all manner of tenths and tythes ariſing therefrom, and then in the poſſeſſion of the ſaid R. S. his undertenant, undertenants, or aſſigns, together with all ways, waters, watercourſes, eaſements, profits, commodities, advantages and appurtenances to the aforeſaid premiſes, or any part thereof, belonging or in anywiſe appertaining, except as in the ſaid indenture is excepted, to have and to hold the ſaid dwelling-houſe, ſtable, turf-houſe and garden, tenths and tythes of all the demiſed premiſes, with their and every of their appurtenances (except as before excepted) unto the ſaid R. S. and his aſſigns, from thenceforth for and during the natural lives of J. R. of Toſſido aforeſaid, the ſaid R. S. and L. S. (brother of the ſaid leſſee), and for and during the natural life of the longeſt liver of them, yielding and paying therefore, yearly and every year during the ſaid term, unto the ſaid M. G. her heirs and aſſigns, the yearly rent or ſum of one ſhilling of lawful money of Great Britain, at the feaſts of the Annunciation of the Bleſſed Virgin Mary and St. Michael the Archangel, by even and equal portions, without deduction or defalcation of or for any manner of rates, taxes, or other payments whatſoever; and the ſaid R. S. for himſelf, his executors, adminiſtrators, and aſſigns, and every of them, did covenant, promiſe, and grant, to and with the ſaid M. G. her heirs and aſſigns, and every of them, by the ſaid indenture in manner following, that is to ſay, that he the ſaid R. S. his executors, adminiſtrators and aſſigns, or ſome or one of them, ſhould and would, from time to time, and at all times thereafter during the term thereby granted, well and truly pay the ſaid yearly rent or ſum of one ſhilling, thereupon reſerved as the ſame ſhould become due and be payable, according to the reſervation aforeſaid, without deduction or defalcation of or for any manner of rates, taxes, or other payments whatſoever; and further alſo that he the ſaid R. S. his executors, adminiſtrators or aſſigns, or ſome or one of them, ſhould and would from time to time, and at all times thereafter during the term thereby granted, at his and their, or ſome or one of their own proper coſts and charges, well and ſufficiently repair, uphold, and maintain, amend, preſerve, hedge, ditch, fence, cleanſe, and keep the premiſes thereby demiſed, and every part and parcel thereof, and all houſes and edifices, walls, hedges, ditches, gates, bars, pales, bolts, rails, ſtiles, and fences whatſoever, when, where, and as often as need ſhould be and require, and at the end or other ſooner determination of the term thereby granted, the ſame premiſes, and every part and parcel thereof, being ſo well and ſufficiently repaired, upheld, maintained, amended, preſerved, hedged, ditched, fenced, ſcoured, cleanſed and kept into the hands of the ſaid M. G. her heirs and aſſigns, quietly and peaceably ſhould and would have, ſurrender, and yield up, together with all doors, locks, keys, bolts, hooks, hinges, wainſcots, partitions, ſhelves, glaſs windows, gates, bars, poſts, pales,

pales, rails, ſtiles, fences and appurtenances in, upon, and belonging to the premiſes or any part thereof, without ſpoiling or defacing the ſame, as by the ſaid indenture, relation being thereto had, may amongſt other things more fully and at large appear;" by virtue of which ſaid demiſe the ſaid R. S. afterwards, to wit, on, &c. entered into all and ſingular the ſaid demiſed premiſes with the appurtenances (except as aforeſaid), and became and was thereof poſſeſſed for the ſaid term to him thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging to the ſaid M. G. her heirs and aſſigns; and the ſaid R. S. being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, for the ſaid term ſo to him thereof demiſed as aforeſaid, and the ſaid reverſion thereof, with the appurtenances belonging to the ſaid M. G. as aforeſaid, afterwards and during the continuance of the ſaid demiſe, to wit, on, &c. at, &c. by a certain indenture of bargain and ſale then and there made between the ſaid M. G. and F. G. of the one part, and J. C. and W. R. of the other part (one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal of the ſaid M. G. and F. G. he the ſaid W. W. now brings here into court, the date whereof is the day and year aforeſaid); the ſaid M. G. for the conſiderations therein mentioned, bargained and ſold the ſaid reverſion of and in the ſaid premiſes, with the appurtenances (amongſt other things) to the ſaid J. C. and W. R. *to have and to* "hold the ſame to the ſaid J. C. and W. R. their executors, adminiſtrators and aſſigns, from the day next before the day of the date of the ſaid laſt-mentioned indenture, for and during, and unto the full end and term of one year from thence next enſuing, and fully to be complete and ended, as by the ſaid indenture of bargain and ſale, relation being thereto had, will amongſt other things more fully and at large appear;" *by* virtue of which ſaid laſt mentioned indenture, and by force of the ſtatute made for transferring uſes into poſſeſſion, the ſaid J. C. and W. R. became and were poſſeſſed of the ſaid reverſion, with the appurtenances, for the ſaid term ſo to them thereof granted as aforeſaid, the further reverſion thereof, with the appurtenances belonging to the ſaid M. G. F. G. their heirs and aſſigns, and being ſo thereof poſſeſſed, and the ſaid further reverſion thereof belonging as aforeſaid, and the ſaid R. S. being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of releaſe then and there made between the ſaid R. G. and F. G. of the firſt part, and the ſaid J. C. and W. R. of the ſecond part, and R. W. of the third part (one part of which ſaid indenture of releaſe, the ſaid W. W. now brings here into court, the date whereof is the day and year aforeſaid), they the ſaid M. G. and F. G. for the conſiderations therein mentioned, releaſed the ſaid further reverſion of and in the ſaid demiſed premiſes, with the appurtenances (amongſt other things) to the ſaid J. C. and W. R. "*to* have and to hold the ſame unto the ſaid J. C. and W. R. their heirs and aſſigns, to ſuch uſes, upon ſuch

truſts, and for ſuch purpoſes as were and are in the ſaid indenture in that behalf expreſſed, that is to ſay (amongſt other uſes in the ſaid laſt-mentioned indenture ſpecified) to the uſe (in the firſt place) of the ſaid R. W. for and during the term of his natural life, without impeachment of waſte, and from and after the determination of that eſtate, then to the uſe of the ſaid J. R. and W. C. and their heirs, during the life of the ſaid R. W. upon truſt, to preſerve the contingent uſes and eſtates thereinafter limitted, and from and after the deceaſe of the ſaid R. W. then to the uſe and behoof of the ſaid T. W. therein named, for and during the term of his natural life, without impeachment of waſte, and from and after the determination of that eſtate, then to the uſe of the ſaid J. C. and W. R. and their heirs, during the life of the ſaid T. W. upon truſt, to preſerve the contingent uſes and eſtates thereinafter limited, and from and after the deceaſe of the ſaid T. W. then to the uſe and behoof of the firſt ſon of the body of the ſaid T. W. and to the heirs male of the body of ſuch firſt ſon lawfully begotten, remainder to the ſecond, third, and every other ſon and ſons of the body of the ſaid T. W. lawfully iſſuing, and for want and in default of ſuch iſſue, then to the uſe of the ſaid J. C. and W. R. and their heirs upon truſt, to preſerve the contingent uſes and eſtates thereinafter limited, with remainder to the ſecond ſon of the body of the ſaid R. W. and the heirs male of the body of ſuch ſecond ſon lawfully iſſuing, as by the ſaid indenture of releaſe, relation being thereto had may more fully and at large appear:" *And* the ſaid plaintiff avers, that after the making of the ſaid laſt-mentioned indenture, and during the continuance of the ſaid demiſe, to wit, on, &c. at, &c. the ſaid T. W. the firſt ſon of the ſaid R. W. died without iſſue, leaving the ſaid W. W. ſecond ſon of the body of the ſaid R. W. lawfully begotten him ſurviving; and that afterwards, to wit, on, &c. at, &c. the ſaid R. W. died, upon whoſe death the ſaid W. W. became and was, and from thence hitherto hath been, and ſtill is ſeiſed in his demeſne, as of fee-tail, to him and the heirs male of his body lawfully begotten, of and in the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, to wit, at, &c.: And the ſaid W. W. avers, that the ſaid R. S. in the aforeſaid indenture of leaſe named, is ſtill owing, to wit, at, &c. and although he the ſaid W. W. ſince he ſo became ſeiſed of the ſaid reverſion as aforeſaid, hitherto hath performed and fulfilled all things in the ſaid indenture of leaſe contained on the part and behalf of the ſaid M. G. and her aſſigns to be performed and fulfilled; yet proteſting that the ſaid R. S. in his lifetime, and the ſaid J. S. and Alice his wife ſince his death, have not performed or fulfilled any thing in the ſaid indenture contained on the part and behalf of the ſaid R. S. and his executors and adminiſtrators to be performed and fulfilled, the ſaid W. W. in fact ſaith, that a large ſum of money, to wit, the ſum of four ſhillings of the ſaid yearly rent or ſum of one ſhilling in the ſaid indenture of leaſe mentioned, for four years of the ſaid term

term in that indenture alſo mentioned elapſed ſince the ſaid W. W. ſo became ſeiſed of the ſaid reverſion as aforeſaid, and ending and ended on the feaſt-day of the Annunciation of the Bleſſed Virgin Mary A. D. 1789, and then becoming and being due and payable, was not then paid, but became and was, and from thence hitherto hath been, and ſtill is in arrear, unpaid, and owing unto him the ſaid W. W. contrary to the tenor and effect of the ſaid indenture of leaſe, and of the ſaid covenant of the ſaid R. S. in that behalf made as aforeſaid, to wit, at, &c.: And the ſaid W. W. further ſaith, that the ſaid R. S. in his lifetime, and the ſaid J. S. and Alice his wife ſince his death, have not, nor have, nor hath any or either of them, ſince he the ſaid W. W. became ſo ſeiſed of the ſaid reverſion of and in the ſaid demiſed premiſes as aforeſaid, from time to time, and at all times, at their or any or either of their own proper coſts and charges well and ſufficiently repaired, upheld, maintained, amended, preſerved, hedged, ditched, fenced, ſcoured, cleanſed, and kept the ſaid demiſed premiſes, and every part and parcel thereof, in all houſes, edifices, barns, ſtables, walls, hedges, ditches, gates, bars, poſts, pales, rails, ſtiles, and fences whatſoever, when, where, and as often as need hath been and required, but omitted and neglected ſo to do, and on the contrary thereof the ſaid W. W. ſaith, that ſince he ſo became ſeiſed of and in the ſaid reverſion as aforeſaid, and before the exhibiting the bill of him the ſaid W. W. to wit, on, &c. at, &c. the ſaid demiſed dwelling houſe, ſtables, and other the erections, edifices, and buildings belonging to the ſaid demiſed premiſes, and every part and parcel thereof, together with the walls, gates, &c. of and belonging to the ſaid demiſed premiſes, with the appurtenances, became and were reſpectively ruinous, out of repair, proſtrate, fallen down, and deſtroyed for want of needful and neceſſary repairing, upholding, and maintaining thereof, and ſo from thence hitherto have remained and continued, and ſtill doth remain and continue, and the ſaid demiſed garden alſo then and there became and was, and from thence hitherto hath been, and ſtill is ruinous, out of repair, and uncleſs, for want of needful and proper care and preſervation thereof, and the ditches, drains, and watercourſes of and belonging to the ſaid demiſed premiſes became and were, and during all the time laſt aforeſaid, have been and ſtill are reſpectively foul, choaked up, and ruinous, for want of needful and neceſſary ſcouring, cleanſing, and repairing the ſame, contrary to the tenor and effect of the ſaid indenture of leaſe, and of the covenant of the ſaid R. S. made as aforeſaid; and ſo the ſaid W. W. ſaith, that the ſaid R. S. and the ſaid J. S. and Alice his wife have not kept with him the ſaid W. W. the ſaid covenants ſo made by the ſaid R. S. as aforeſaid (although often requeſted), but have broken the ſame, and to keep the ſame with the ſaid W. W. as ſuch aſſignee as aforeſaid have refuſed, and the ſaid J. S. and Alice his wife ſtill refuſe ſo to do, to the damage of the ſaid J. S. of two thouſand pounds; and therefore he brings his ſuit. V. LAWES.

Declaration for breach of covenant, in not repairing the windows; for committing waste, by taking away trees, destroying window-shutters, and removing and carrying away partition.

LANSDOWN *against* BEARD. } SOMERSETSHIRE, to wit. Edmund Lansdown complains of William Beard, being, &c. of a plea of breach of covenant; for that whereas, by a certain indenture, made on the fifth day of September 1772, at Taunton, in the said county of Somerset, between the said Edmund (by the name of E. L. of Barnwell, in the county of Somerset yeoman), of the one part, and the said W. (by the name of W. B. of the same place, taylor), of the other part, (the counterpart of which said indenture, sealed with the seal of the said W. the said E. now brings here into court, the date whereof is the same day and year aforesaid); he the said L. for the considerations therein mentioned, did demise, lease, and to farm let unto the said W. all that messuage or tenement, with the stable, garden, and orchard to the same belonging, situate, lying, and being in the West-street of Barnwell aforesaid, then in the occupation and possession of Edmund Landdown, son of the said E. the plaintiff, party to the said indenture, together with all ways, paths, passages, waters, water-courses, common easements, profits, and appurtenances whatsoever to the said messuage or tenement and premises belonging, or in any wise appertaining, to hold the same with the appurtenances to the said W. his executors, administrators, and assigns, from the [illegible] day of April next ensuing the date of the said indenture for and during, unto the full end and term of forty years from thence next ensuing and fully to be complete and ended, he the said E. the plaintiff, party to the said indenture, his executors and administrators paying therefore yearly and every year during the said term unto the said W. his executors, administrators and assigns, the yearly rent of seven pounds of lawful money of Great Britain, payable half yearly, by equal half yearly payments; and the said W. for himself, his executors, administrators and assigns, did thereby covenant, promise, and grant to and with the said E. the plaintiff, his executors, administrators and assigns (amongst other things) in manner and form following; that is to say, that he the said W. his executors, administrators and assigns, should and would keep and maintain the windows in the said demised premises in good and sufficient repair, and leave the same in such good and sufficient repair at the end of the said term thereby granted, he the said L. the plaintiff first putting the said windows in good and tenantable condition; and also that he the said W. his executors, administrators, and assigns, should not, during the said term thereby granted, commit or do, or cause to be committed and done, any wilful spoil or waste to the said demised premises, or any part thereof, as by the said indenture (relation being thereunto had) will amongst other things more fully appear, by virtue of which said indenture the said W. afterwards, to wit, on the twenty sixth day of March 1773, entered into the said demised premises, with the appurtenances, and became and was possessed thereof, and continued so possessed thereof, until the end and expiration of the term, when he the said W. quitted and yielded up possession of the aforesaid demised premises, with the appurtenances, to the said L. the plaintiff: And the said E. the plaintiff further says, that although

though the ſaid E. the plaintiff, afterwards, to wit, on the ſame twenty-ſixth of March 1773, did put all and every the windows in the ſaid demiſed premiſes into good and tenantable condition, to wit, at Taunton aforeſaid, in the county aforeſaid; and although he the ſaid E. the plaintiff, always from the time of the making of the ſaid indenture hitherto, hath done, performed, and fulfilled all and every thing in the ſaid indenture mentioned, on his part and behalf to be done, performed, and fulfilled, to wit, at Taunton aforeſaid, in the ſaid county; yet proteſting that the ſaid W. hath not done, performed, and fulfilled, any thing in the ſaid indenture contained, on his part and behalf to be done, performed, and fulfilled, he in fact ſays, that the ſaid W. did not, after all and every the windows in the ſaid demiſed premiſes had been put in good and tenantable condition by the ſaid E. the plaintiff, as aforeſaid, at any time during the continuance of the ſaid term, keep up and maintain the ſame in good and ſufficient repair, but did, during all the term laſt aforeſaid, permit and ſuffer the glaſs, lead, gutters, frames, and other parts of the ſaid windows to be broken and become ruinous, in decay, and out of repair, for want of neceſſary and needful reparation and amendment thereof, and the [illegible] to be, ruinous, in decay, and out of repair, at the [illegible] and expiration of the ſaid term, delivered [illegible] ſaid E. the plaintiff as aforeſaid, contrary to [illegible] and covenant of the ſaid indenture, and of the covenant of the [illegible] in that behalf as aforeſaid: And the ſaid [illegible] plaintiff further in fact ſays, that the ſaid W. after he became poſſeſſed of the ſaid demiſed premiſes, and during the continuance of the ſaid term, to wit, on the firſt day of January 1774, and on divers days and times between that day and the day of exhibiting the bill of the ſaid E. plaintiff did wittingly and willingly commit and do, and cauſe and procure to be committed and done, waſte, ſpoil, and deſtruction upon the ſaid demiſed premiſes, by then and there rooting, grubbing up, ſtubbing up, proſtrating, and felling trees, to wit, ten apple trees, ten pear trees, ten plumb trees, and ten cherry trees, of great value, to wit, of the value of fifty pounds, then growing and being in the orchard and garden, to the ſaid demiſed premiſes belonging and appertaining, and part and parcel of the ſaid demiſed premiſes, and taking and carrying away the ſame, and converting and diſpoſing thereof to his own uſe; and alſo by then and there taking down and breaking down, proſtrating, and deſtroying divers windows-ſhutters, to wit, ſix window-ſhutters, of and belonging to, and part and parcel of, and affixed to the ſaid meſſuage, part and parcel of the ſaid demiſed premiſes, and converted and diſpoſed thereof, and the materials thereof coming to his own uſe; and alſo by then and there pulling down, throwing down, proſtrating, and deſtroying divers partition walls, and other walls, to wit, two partition walls, and two other walls, which were then erected, built, and fixed in and upon the ſaid premiſes, and the materials thereof coming, taking, carrying

away, and converting and diſpoſing thereof to his own uſe, to wit, at, &c.; and ſo the ſaid E. the plaintiff ſays, that the ſaid W. (although often requeſted) hath not kept with him his ſaid covenants made with the ſaid E. the plaintiff, but hath broke the ſame, and to keep the ſame with the ſaid E. the plaintiff, hath hitherto altogether refuſed, and ſtill doth refuſe, to the damage, &c. Pledges, &c. *Drawn by* J. GRAHAM.

Declaration in covenant by an executor of a deviſee againſt leſſee, who covenanted to keep the premiſes in repair, and not to ſet down any of the arable ground for graſs without being firſt ſown with a quantity of clover; for not repairing the hedges and premiſes; and for yielding them up out of repair; and that during the term he ſet down a part of the land for graſs without ſowing any clover.

ANGLESEA, to wit. Michael Parry, executor of the laſt will and teſtament of Janet Hughes, widow, deceaſed, who was deviſee of Michael Hughes, deceaſed, complains of William Williams, of a plea of breach of covenant; for that whereas one Michael Hughes, ſince deceaſed, in his lifetime, that is to ſay, on the twelfth day of November 1770, at, &c. in, &c. and long before, was ſeiſed in his demeſne as of fee of and in the premiſes hereinafter mentioned, and being ſo ſeiſed thereof, by a certain indenture made the ſaid twelfth of November, in the ſaid year of Our Lord 1770, between, &c. &c. [ſet forth the indenture, which was, that M. H. demiſed certain premiſes for a term of years to the defendant W. W. which he covenanted to keep in repair, and deliver them up at the end of the term in good repair, and that the defendant ſhould not ſet down any of the arable ground for graſs without being firſt ſown with a ſufficient quantity of clover] as by the ſaid indenture, amongſt other things, more fully appears; by virtue of which ſaid demiſe he the ſaid William Williams afterwards, to wit, on the ſaid twelfth of November 1770, at Beaumaris aforeſaid, in the ſaid county, entered into and upon the ſaid demiſed premiſes, with the appurtenances, and became and was poſſeſſed thereof, for the ſaid term to him thereof demiſed as aforeſaid, the reverſion thereof expectant on the determination of the ſaid demiſe, belonging to the ſaid Michael Hughes, and his heirs, and aſſigns; and the ſaid William being ſo poſſeſſed, and the ſaid Michael being ſo ſeiſed in his demeſne as of fee of and in the ſaid reverſion as aforeſaid, he the ſaid Michael afterwards, to wit, on the fifth day of July, in the year of Our Lord 1780, at Beaumaris aforeſaid, in the ſaid county, duly made his laſt will and teſtament in writing, and thereby demiſed the ſaid reverſion of the ſaid demiſed premiſes (amongſt other things), with the appurtenances, to the ſaid Janet Hughes and her aſſigns, for and during the term of her natural life, with divers remainders and limitations over, and afterwards, to wit, on the firſt of Auguſt 1780, at, &c. died, ſo ſeiſed of the ſaid reverſion of the ſaid demiſed premiſes, without having altered or revoked his ſaid will; after whoſe death the ſaid Janet, by virtue of the ſaid deviſe, became and was ſeiſed of the ſaid reverſion of the ſaid premiſes, with the appurtenances, ſo demiſed to the ſaid William as aforeſaid, in her demeſne as of freehold, for and during the term of her natural life, and continued ſo ſeiſed thereof as aforeſaid, continually from thence until, and at, and after the end and determination of the ſaid term by the ſaid in-

denture granted: And the ſaid Michael Parry, executor as aforeſaid, in fact ſays, that afterwards, and in the lifetime of the ſaid Janet, ſince deceaſed, and after ſhe the ſaid Janet became ſeiſed as aforeſaid, he the ſaid William did not, at his proper coſts and charges, from time to time, during the continuance of the ſaid term, well and ſufficiently ſupport, ſuſtain, amend, and maintain the ſaid ſeveral meſſuages, tenements, pieces or parcels of land, and premiſes by the ſaid indenture demiſed, and all and every the aforeſaid edifices and buildings. in and with all manner of needful and neceſſary reparations; nor did he the ſaid William well and ſufficiently hedge, ditch, keep, and maintain all the hedges, ditches, and incloſures of the ſaid premiſes, in and with all manner of neceſſary reparations, from time to time, when and as often as occaſion required, during the ſaid term, nor all the ſaid premiſes, ſo being well and ſufficiently repaired, fenced, ditched, cleanſed, made, and amended, did he yield up and leave at the end of the ſaid term unto the ſaid Janet, deceaſed, in her lifetime; but on the contrary thereof, the ſaid William did, during the continuance of the ſaid term, after the deceaſe of the ſaid Michael Hughes, and after the ſaid Janet became ſeiſed as aforeſaid, to wit, on the ſaid firſt of Auguſt 1780, at, &c. permit and ſuffer the ſaid meſſuages, tenement, pieces or parcels of land, and premiſes aforeſaid, and all the aforeſaid edifices and buildings, to be greatly ruinous and in decay in the doors, floors, windows, ceilings, wainſcots, joiſts, and beams, for want of repairing and amending the ſame; and alſo permitted and ſuffered the ſaid hedges, ditches, and incloſures of the ſaid premiſes to be greatly ruinous and in decay, for want of neceſſary amending, fencing, ſcouring, and cleanſing thereof, contrary to the form and effect of the ſaid indenture, and the ſaid covenant in the ſaid indenture ſo made as aforeſaid, and all the ſaid premiſes ſo ruinous and in decay as aforeſaid; he the ſaid William afterwards, at the expiration of the ſaid term, and after the deceaſe of the ſaid Michael Hughes, and after the ſaid Janet became ſeiſed as aforeſaid, and in her lifetime, delivered up and yielded up, contrary to the form and effect of the ſaid indenture, and of the ſaid covenant of the ſaid William, ſo made as aforeſaid: And the ſaid Michael Parry further in fact ſays, that afterwards, and after the ſaid Janet became ſo ſeiſed as aforeſaid, and during the continuance of the ſaid term, to wit, in the years of Our Lord 1780, 1781, 1782, 1783, 1784, and 1785, did reſt, put by, and let down divers, to wit, two hundred acres of the arable land or ground, part and parcel of the ſaid premiſes by the ſaid indenture demiſed; yet the ſaid William did not, at any time during the time laſt aforeſaid, firſt, or at any other time whatſoever, ſow the ſaid arable land or ground ſo reſted, put by, and let down as aforeſaid, with a ſufficient quantity of clover or common graſs-ſeed, meet and convenient for the preſervation thereof, but on the contrary thereof, during all the time aforeſaid, neglected and refuſed to ſow any clover or common graſs-ſeed in and upon the ſaid arable land ſo reſted, put by, and let down as

aforeſaid,

aforeſaid, contrary to the form and effect of the ſaid indenture, and of the ſaid covenant of the ſaid William ſo by him made as aforeſaid, to wit, at, &c.; and ſo the ſaid Michael Parry ſays, that the ſaid William did not keep his ſaid covenant ſo made with the ſaid Janet, in her lifetime, or with the ſaid Michael Parry, as executor as aforeſaid, ſince her deceaſe, but hath broken the ſame, and to keep the ſame with the ſaid Janet, deceaſed, in her lifetime, and the ſaid Michael Parry, as executor as aforeſaid, ſince her deceaſe, he the ſaid William wholly refuſed, and ſtill doth refuſe, to the damage, &c.; and the ſaid Michael Parry brings here into court the letters teſtamentary of the ſaid Janet Hughes, by which it ſufficiently appears to the court here, that the ſaid Michael Parry is executor of the laſt will and teſtament of the ſaid Janet Hughes, deceaſed, and hath the execution thereof, &c. Pledges, &c. *Drawn by* J. GRAHAM.

Declaration by aſſignees of leſſor againſt aſſignees of leſſees, for general dilapidations on a wharf, &c. and for not repairing a wall belonging to ſuch wharf, after notice upon view, according to a power for that purpoſe.—Leſſor poſſeſſed for a term, and one of the plaintiffs a deviſee in remainder under his will, and a purchaſer of a part of the reverſion from another of ſuch aſſignees, and the other plaintiff, purchaſer from the aſſignees, under a commiſſion of bankrupt iſſued againſt a perſon entitled to the other third in right of his wife. W. R. the leſſor poſſeſſed of premiſes for the reſidue of a term of years from which T. part,

MIDDLESEX, *ſs.* W. T. late of, &c. aſſignee of Enos Smith and John Pittman, was ſummoned to anſwer S. J. R. and R. M. aſſignees of W. R. deceaſed, in a plea, that he keep with them the covenant made between the ſaid W. R. and the ſaid E. S. and J. P. for themſelves and their aſſignees, according to the force, form, and effect of a certain indenture thereof made between the ſaid W. R. of the one part, and the ſaid E. S. and J. P. of the other part; and thereupon the ſaid S. J. R. and R. M. by R. L. their attorney, complain, for that whereas the ſaid W. R. before and at the time of the making of the indenture of leaſe, hereafter mentioned to have been made between him the ſaid W. R. and the ſaid E. S. and J. P. was lawfully poſſeſſed of the ſeveral premiſes thereby demiſed, with the appurtenances, for the reſt, reſidue, and remainder of a certain term therein then to come and unexpired, to wit, the term of ſixty-one years, commencing from the ſixth day of April, which was in the year of Our Lord 1764, and theretofore thereof granted by ſir H. T. to the ſaid W. R. by virtue of a certain indenture of leaſe thereof (amongſt other premiſes), made between the ſaid ſir H. T. of the one part, and the ſaid W. R. of the other part, and bearing date, &c.; and the ſaid W. R. being ſo thereof poſſeſſed by a certain indenture of leaſe made in the lifetime of the ſaid W. R. to wit, on, &c. to wit, at, &c. between the ſaid William Reed, deceaſed, of the one part, and the ſaid E. S. and J. P. of the other part (one part of which ſame indenture ſealed with the ſeals of the ſaid E. S. and J. P. and bearing date the day and year laſt aforeſaid, they the ſaid S. J. R. and R. M. now bring into court here), he the ſaid W. R. for the conſiderations therein mentioned, did demiſe, leaſe, ſet, and to farm let unto the ſaid E. S. and J. P. all that meſſuage or tenement and dwelling-houſe, and all and ſingular, &c. and all other erections and buildings uſually held and enjoyed therewith, ſituate, ſtanding, lying, and being, at or near a certain place called, &c. abutting and adjoining towards the weſt, &c. together

ther with all cellars, &c. whatſoever to the ſaid meſſuage or tene-
ment, or dwelling-houſe, buildings, &c. mentioned to be by the
ſaid laſt-mentioned indenture demiſed, belonging or in any wiſe
appertaining, as by the ſaid ſeveral premiſes were in the tenure or
occupation of R. S. and then of the ſaid E. S. and J. P. and were
more plainly delineated and deſcribed in the plan or ground plot
thereof unto the ſame indenture annexed, to have and to hold the
ſaid meſſuage, tenement, or dwelling houſe, wharf, &c. and all *Habendum for 59*
and ſingular other the premiſes mentioned to be thereby demiſed, *years, from, &c.*
with their and every of their appurtenances, unto the ſaid E. S. *&c.*
and J. P. their executors, adminiſtrators, and aſſigns, from the
feaſt day of the Annunciation of the bleſſed Virgin Mary then laſt
paſt, for and during and unto the full end and term of fifty-nine
years from thence next enſuing, and fully to be complete and
ended; yielding and paying therefore yearly, and every year dur- *Reddendum.*
ing the ſaid term, unto the ſaid W. R. his executors, adminiſtra-
tors or aſſigns, the yearly rent or ſum of forty-ſeven pounds of
lawful money of Great Britain, the ſame to be paid during the
ſaid term of fifty-nine years upon the four moſt uſual feaſts or days
of payment of rent in the year, that is to ſay, &c. by four even and
equal portions the firſt payment thereof to begin and be made on,
&c. then next enſuing the date of the ſaid laſt-mentioned inden-
ture; and the ſaid E. S. and J. P. did by the ſaid laſt-mentioned *Covenant.*
indenture for themſelves ſeverally, and for their ſeveral and reſ-
pective executors, adminiſtrators and aſſigns, and for every of
them, covenant, promiſe, and agree to, and with the ſaid W. R.
his executors, adminiſtrators, and aſſigns, in manner following,
that is to ſay, that they the ſaid E. S. and J. P. or one of them,
their, or one of their executors, adminiſtrators, or aſſigns, or
ſome or one of them, ſhould or would at his, their, ſome or one
of their own proper coſts and charges at all times during the ſaid
term by the ſaid laſt-mentioned indenture granted, as often as need
ſhould require, well and ſufficiently repair, uphold, ſupport, main-
tain, amend, pave, purge, ſcour, cleanſe, empty, and keep the
ſaid demiſed premiſes, with the appurtenances, and all new erec-
tions and buildings which ſhould be erected on the ſaid demiſed
premiſes during the term by the ſaid laſt-mentioned indenture de-
miſed, and the brick wall at the eaſt-end of the ſaid thereby demiſed
premiſes called, &c. and all other brick walls and fences of and be-
longing, or thereafter to belong to the ſame; and all the pave-
ments, poſts, &c. thereto belonging, or which ſhould thereafter
belong to the ſame, with all manner of needful and neceſſary
reparations, cleanings, ſcourings, and amendments whatſoever,
and all new erections and buildings which ſhould be erected as
aforeſaid (damages happening to the ſame premiſes, or any part
thereof by fire only excepted), and the ſaid demiſed premiſes, with
the appurtenances, ſo being in all things well and ſufficiently
repaired, uphold, ſupported, maintained, amended, paved, &c.
(except as before excepted), together with all the doors, &c. and
all other things which then were, or which at any time thereafter
during the term thereby granted, ſhould be any ways fixed or
faſtened

fastened to, or set up in, or upon the said demised premises, or any part thereof, or belonging to the same, should and would at the end, expiration, or other sooner determination of the term thereby granted, peaceably and quietly surrender and yield up unto the said W. R. his executors, administrators, or assigns; and moreover, that it should and might be lawful as well to and for the said W. R. his executors, administrators, and assigns, as for the head landlord or landlords of the said thereby demised premises for the time being, with or without workmen, or others in his or their company, four times in the year during the said term, at seasonable and convenient times in the day time, to enter and come into and upon the said premises, by the said last-mentioned indenture demised, or the appurtenances or any part or parcel thereof to view, search, and see the state and conditions of the repairs thereof, and of all such decays, defects, and wants of repairs as should be then and there found, to give or leave notice or warning thereof in writing at the said demised premises to or for the said E. S. and J. P. for themselves, their executors, administrators, and assigns, to repair and amend the same within the space of three months then next following, within which said time or space of three months then next after such notice or warning so given or left as aforesaid, they the said E. S. and J. P. for themselves, their executors, administrators, and assigns, did by the said last-mentioned indenture, covenant, promise, and agree to and with the said W. R. his executors, administrators, and assigns, to repair, amend, and make good all and every such decays and wants of reparation accordingly (damages happening thereto by fire as aforesaid excepted), as by the said last-mentioned indenture, reference being thereunto had, may (amongst other things) more fully and at large appear; by virtue of which said last-mentioned demise, they the said E. S. and J. P. entered into all and singular the said demised premises, with the appurtenances, and became and were thereof possessed for the said term so to them thereof demised as aforesaid (the reversion thereof, with the appurtenances belonging, to the said W. R.); and being so possessed thereof, and the said reversion thereof, with the appurtenances belonging to the said W. R. as aforesaid, he the said W. R. after the making of the said demise, to wit, on, &c. at, &c. duly made his last will and testament in writing, and did thereby (amongst other things), give and bequeath unto his then wife, A. R. for and during the term of her natural life, his said reversion of and in the said premises so by him demised to the said E. S. and J. P. as aforesaid, with the appurtenances; and from and after the decease of his said wife, he thereby willed and directed that the said reversion (and premises so therein before by him given and bequeathed to his said wife, for and during her said life), should be applied and disposed of in such manner as he should, by any codicil to that his will, direct and appoint; and for want of such codicil, direction, or appointment, to the use and benefit of his sons, J. R. and the said S. J. R. and his daughter M. E. (the wife of D. E. therein before married), share and share alike as tenants in common, and not as joint tenants; and the said W. R. did by his said

Another covenant.

Lessees entry.

Lessor make his will, and devises the reversion to his wife for life, remainder to future appointment by codicil.

In default of appointment, to sons, &c. appointment of shares.

ſaid will appoint his ſaid two ſons J. R. and S. J. R. and his ſons-in-law H. D. and D. E. joint executors of his ſaid will, and afterwards, to wit, on, &c. at, &c. the ſaid W. R. died ſo entitled to the reverſion of the ſaid demiſed premiſes, with the appurtenances, and without altering or revoking his ſaid will, or by any codicil thereto, directing or appointing, or in any manner revoking or altering his ſaid bequeſt and direction as to the ſaid reverſion (after the death of his ſaid wife A. R.); and upon the death of the ſaid W. R. his ſaid will was duly proved by the ſaid J. R. and S. J. R. two of the executors therein named, who then and there, to wit, on, &c. at, &c. aſſented to the ſaid bequeſt ſo thereby made as aforeſaid; and the ſaid A. R. thereupon became and was intitled to the aforeſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, for and during her natural life, the further reverſion thereof, with the appurtenances, upon the death of the ſaid A. R. belonging to the ſaid J. R. S. J. R. and D. E. and M. his wife, in right of the ſaid Mary, as tenants in common thereof, that is to ſay, to the ſaid J. R. as to one undivided third part thereof, to the ſaid S. J. R. as to one other undivided third part thereof, and to the ſaid D. E. and M. his wife, in right of the ſaid M. as to the other undivided third part thereof; and the ſaid A. R. remained and continued ſo intitled unto the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, until afterwards, to wit, on, &c. when ſhe the ſaid A. R. died, to wit, at the pariſh, &c. upon whoſe death the ſaid J. R. S. J. R. and D. E. and M. his wife, in right of the ſaid M. became and were entitled to and poſſeſſed of the ſaid further (or then remaining) reverſion of and in the ſaid demiſed premiſes, with the appurtenances, as ſuch tenants in common thereof as aforeſaid, that is to ſay, the ſaid J. R. of one undivided third part thereof, the ſaid S. J. R. of one other undivided third part thereof, and the ſaid D. E. in right of his ſaid wife, and ſubject to his diſpoſition of the other undivided third part thereof, to wit, at the pariſh, &c. in the county, &c.; and the ſaid S. J. R. and R. M. in fact further ſay, that the ſaid D. E. and M. his wife, in right of the ſaid M. being ſo intitled to the ſaid reverſion of and in one undivided third part of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, he the ſaid D. E. afterwards, and whilſt he was ſo intitled, to wit, on, &c. at, &c. became and was a bankrupt within the true intent and meaning of the ſeveral ſtatutes made and then in force concerning bankrupts ſome or one of them; and being ſo bankrupt, a certain commiſſion of bankrupt under the great ſeal of Great Britain, bearing date at Weſtminſter, the ſame day and year laſt aforeſaid, was thereupon awarded and iſſued forth againſt the ſaid D. E. directed to T. B. &c. gentlemen, to whom the ſame was then and there delivered, and by which ſaid commiſſion our ſaid lord the king gave full power and authority to the ſaid T. B. &c. three or four of them to proceed according to the ſtatutes concerning bankrupts, not only concerning the ſaid bankrupt his body, lands, and tenements, both freehold and copyhold, goods

Dies without making a codicil.

Will proved by two executors, who aſſented to bequeſt.

Widow became entitled for life.

Widow dies.

Plaintiff and other remaindermen became entitled.

D. E. becomes bankrupt.

Commiſſion.

goods, debts, and all other matters whatſoever, but alſo concerning all other perſons who by concealment, claim, or otherwiſe, ſhould offend touching or concerning the premiſes, or any part thereof, againſt the true intent and purport of the ſaid ſtatutes, and to do and execute all and every thing or things whatſoever, as well for and towards ſatisfaction and payment of the creditors of the ſaid D. E. as towards and for all other intents and purpoſes whatſoever, according to the order and proviſion of the ſaid ſtatutes, as by the ſaid commiſſion (amongſt other things) more fully appears; and the ſaid S. J. R. and R. M. further ſay, that the ſaid D. E. having ſo become and ſtill continuing to be ſuch bankrupt as aforeſaid, afterwards and after the iſſuing the commiſſion of bankrupt, to wit, on, &c. by a certain indenture then and there made, and bearing date the day and year laſt aforeſaid, between the ſaid T. B. &c. the major part of the commiſſioners named and authoriſed in and by the ſaid commiſſion of the one part, and one D. C. of the other part, they the ſaid commiſſioners, parties to the ſaid laſt-mentioned indenture, by force and virtue of the ſaid commiſſion, and of the ſaid ſeveral acts of parliament, and for other conſiderations therein mentioned, did appoint the ſaid D. C. aſſignee of the eſtate and effects of the ſaid D. E. and did alſo thereby order, bargain, ſell, diſpoſe, aſſign, and ſet over unto the ſaid D. C. (amongſt other things), the ſaid undivided third part of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, to which the ſaid D. E. and M. his wife, in right of the ſaid M. were ſo entitled as aforeſaid, at the time of the ſaid D. E. ſo becoming bankrupt as aforeſaid, to hold the ſame, with the appurtenances, unto the ſaid D. C. his executors, adminiſtrators, and aſſigns, in truſt, for the immediate preſervation thereof, and to and for the uſe, benefit and advantage of all the creditors of the ſaid D. E. who had then already ſought, or ſhould thereafter in due time come in and ſeek relief under the ſaid commiſſion, according to the ſeveral ſtatutes therein mentioned, or ſome or one of them, and to and for no other uſe, truſt, intent, or purpoſe whatſoever, by virtue of which ſaid aſſignment all the eſtate and intereſt which were of the ſaid D. E. and M. his wife, in right of the ſaid Mary, of and in the ſaid undivided third part of the aforeſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, at the time of the ſaid D. E. becoming bankrupt as aforeſaid, then and there became and were veſted in the ſaid D. C. and being ſo veſted, and the ſaid D. E. ſtill continuing bankrupt as aforeſaid, and J. B. and P. N. having been choſen aſſignees of the eſtate and effects of the ſaid D. E. as ſuch bankrupt as aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided afterwards by a certain other indenture made and bearing date, &c. between the ſaid D. C. of the firſt part, the ſaid T. B. &c. the major part of the ſaid commiſſioners named and authoriſed in and by the ſaid commiſſion of bankrupt, of the ſecond part, and the ſaid J. B. and P. N. of the third part, he the ſaid D. C. by the direction of the major part of ſaid commiſſioners,

Reverſional aſſignment of D. E.'s third part of the reverſion in right of his wife.

Reverſional aſſignee become entitled to ſuch third part.

Choice of aſſignees under the commiſſion.

in

in and by the ſaid commiſſion named and authoriſed (teſtified as therein is mentioned), did (for the conſiderations therein ſpecified), order, bargain, ſell, aſſign, and ſet over unto the ſaid J. B. and P. N. their executors, adminiſtrators, and aſſigns (amongſt other things), the ſaid undivided third part of the ſaid reverſion of and in the ſaid demiſed premiſes, with the appurtenances, to which the ſaid D. E. and M. his wife, in right of the ſaid M. were ſo intitled as aforeſaid, at the time of the ſaid D. E. ſo becoming bankrupt as aforeſaid: And the ſaid commiſſioners, parties to the ſaid laſt-mentioned aſſignment (being the major part of the ſaid commiſſioners in and by the ſaid commiſſion named and authoriſed), did (for the conſiderations in ſuch aſſignment mentioned), ratify and confirm unto the ſaid J. B. and P. N. their executors, adminiſtrators, and aſſigns, ſuch undivided third part of the ſaid reverſion, with the appurtenances (amongſt other premiſes), to hold the ſame, with the appurtenances unto the ſaid J. B. and P. N. their executors, adminiſtrators, and aſſigns, upon truſt, nevertheleſs for the uſe, benefit, ſatisfaction, and payment of all and every the creditors of the ſaid D. E. who had then already ſought, or ſhould thereafter in due time come in and ſeek relief under and by virtue of the ſaid commiſſion, according to the directions and limitations of the ſeveral ſtatutes therein mentioned, and in that behalf made and provided, by virtue of which ſaid laſt-mentioned aſſignment they the ſaid J. B. and P. N. as ſuch aſſignees of the eſtate and effects of the ſaid D. E. as aforeſaid, then and there became and were at the time of the execution of the indenture hereafter next mentioned, legally intitled to the ſaid one undivided third part of the reverſion of and in the ſaid demiſed premiſes, with the appurtenances, to which the ſaid D. E. and M. his wife, in right of the ſaid M. were ſo as aforeſaid intitled at the time of the ſaid D. E. ſo becoming bankrupt as aforeſaid, and the ſaid S. J. R. and R. M. in fact further ſay, that the ſaid J. B. and P. N. being ſo intitled to the ſaid undivided third part of the ſaid reverſion, ſo to them aſſigned as aforeſaid, by a certain other indenture made, &c. at, &c. between the ſaid J. B. and P. N. of the one part, and the ſaid R. M. of the other part (one part of which ſaid laſt-mentioned indenture, ſealed with the ſeals of the ſaid J. B. and P. N. and bearing date the day and year laſt aforeſaid, the ſaid S. J. R. and R. M. now bring into court here), they the ſaid J. B. and P. N. for the conſideration in the ſaid laſt-mentioned indenture ſpecified, did, and each of them did bargain, ſell, aſſign, transfer, and ſet over rents to the ſaid R. M. his executors, adminiſtrators, and aſſigns (amongſt other things), the one undivided third part of the ſaid reverſion of and in the ſaid demiſed premiſes ſo to them aſſigned as aforeſaid, and all the eſtate and intereſt of them the ſaid J. B. and P. N. therein, to hold the ſame, with the appurtenances, unto the ſaid R. M. his executors, adminiſtrators, and aſſigns, from thenceforth for and during all the then reſt, reſidue, and remainder of the ſaid term of ſixty-one years, ſo granted by the ſaid indenture of leaſe of, &c. hereinbefore mentioned,

Farther aſſignment to ſuch aſſignees.

Aſſignees become entitled.

Aſſignees convey D. E.'s third part to plaintiff R. M.

Plaintiff R. M. becomes entitled to a third part of the reversion.

mentioned, by virtue of which said last-mentioned assignment, the said R. M. then and there, to wit, on the day of the date of the said last-mentioned assignment, at the parish aforesaid, in the county aforesaid, became and was and from thence hitherto hath been and still is entitled to the said undivided third part so to him assigned as aforesaid of the said reversion, with the appurtenances, of and in the aforesaid demised premises, with the appurtenances: And the said S. J. R. and R. M. in fact further say, that the said J. R. being so intitled to one undivided third part of the said reversion of and in the said demised premises as aforesaid, with the appurtenances, afterwards and whilst he was so intitled by certain articles of agreement, indented, made, and fully agreed upon,

J. R. one of lessors devises, assigns his third part to the plaintiff S. J. R.

the seventh day, &c. at, &c. between them the said J. R. of the one part, and the said S. J. R. of the other part (one part of which said articles, sealed with the seal of the said J. R. and bearing date the day and year last aforesaid, the said S. J. R. and R. M. now bring into court here), he the said J. R. for the considerations therein mentioned, assigned, assured, and set over unto the said S. J. R. (amongst other premises) all that his the said J. R.'s one undivided third part of the said reversion of and in the said demised premises, with the appurtenances, to hold the same with the appurtenances, unto the said S. J. R. his executors, administrators, and assigns, from thence-

Whereby he becomes entitled to that third part, as well as to his own third part.

forth for and during all the term, estate, and interest of the said J. R. therein or thereunto; by virtue of which said last-mentioned assignment he the said S. J. R. then there became, and was and still is entitled to the said undivided third part of the said reversion so assigned to him by the said J. R. as aforesaid, and so from thence hitherto hath remained and continued, and still remains and continues so entitled to the said undivided third part of the said reversion so assigned to him as aforesaid, as well as of the said undivided third part so vested in him under and by virtue of the said

Lessees interest comes to defendant by assignment.

will of the said W. R. as aforesaid, to wit, at, &c.: And the said S. J. R. and R. M. in fact further say, that afterwards, and during the said term so demised to the said E. S. and J. P. as aforesaid, to wit, on, &c. at, &c. all the estate, right, title, term of years then to come and unexpired, property, interest, claim, and demand whatsoever of them the said E. S. and J. P. of in and to the said premises so to them demised as aforesaid, with the appurtenances, by assignment thereof then and there made, legally came to and vested in the said W. T.; by virtue whereof the said W. T. afterwards, to wit, on, &c. at, &c. entered into the said demised premises, with the appurtenances, and became and was from thence, and hitherto hath been, and still is thereof possessed, for the rest, residue, and remainder of the said term so thereof demised to the said E. S. and J. P. as aforesaid, the reversion thereof belonging to the said S. J. R. and R. M. in such several parts and proportions thereof as last aforesaid, to wit, at, &c.; and although they the said S. J. R. and R. M. have always since they so became entitled to the said reversion of and in the said premises so demised to the said E. S. and J. P. in such parts and proportions

tions thereof as laſt aforeſaid, hitherto, well and truly performed and fulfilled all things in the ſaid indenture of leaſe thereof to them the ſaid E. S. and J. P. contained, on the part and behalf of the ſaid W. R. and his aſſigns to be performed and fulfilled, accordingto the tenor and effect, true intent and meaning of the ſaid laſt-mentioned indenture; yet proteſting that the ſaid W. T. ſince the ſaid aſſignment of the ſaid demiſed premiſes unto him the ſaid W. T. as aforeſaid, hath not performed or fulfilled any thing in the ſaid laſt-mentioned indenture contained, on the part and behalf of the ſaid E. S. and J. P. and their aſſigns, to be performed and fulfilled, they the ſaid S. J. R. and R. M. in fact ſay, that whilſt they were ſo entitled to the ſaid reverſion of and in the ſaid demiſed premiſes in ſuch parts and proportions thereof as laſt aforeſaid, and ſince the ſaid aſſignment of the ſaid demiſed premiſes unto him the ſaid W. T. as aforeſaid, to wit, on, &c. the ſaid demiſed meſſuage or dwelling-houſe, together with the ſtables, &c. thereto belonging, and parcel of the ſaid demiſed premiſes, were out of repair, ruinous, and in great decay in the walls, &c. and in other parts and particulars thereof, for want of needful and neceſſary repairing, amending, and upholding thereof; and the ſaid demiſed wharf was then and there out of repair and in decay in the land, &c. and in the ground and ſoil and other parts and particulars thereof, for want of needful and neceſſary repairing, amending, and upholding the ſame, and the drains, &c. of and belonging to the ſaid demiſed premiſes, were ſtopped up and obſtructed, filled up and choaked for want of needful and neceſſary cleanſing and ſcouring thereof, and all and ſingular the gates, poſts, pales, &c. thereof were ruinous, proſtrate, broken down, and in great decay, for want of needful and neceſſary repairing, &c. thereof, and ſo from thence hitherto hath remained and continued, and in particular the ſaid S. J. R. and R. M. ſay, that the ſaid brick wall in the ſaid laſt-mentioned indenture particularly mentioned and deſcribed, and called the wharf-wall, was on the day and year laſt aforeſaid, greatly ruinous and out of repair, &c. contrary to the tenor and effect of the ſaid laſt-mentioned indenture of leaſe, and of the covenant of the ſaid E. S. and J. P. in that behalf made as aforeſaid, to wit, at, &c.: And the ſaid S. J. R. and R. M. in fact further ſay, that whilſt they were ſo reſpectively entitled to the ſaid reverſion of and in the ſaid premiſes ſo demiſed to the ſaid E. S. and J. P. in ſuch parts and proportions thereof as laſt aforeſaid, and after the ſaid aſſignment of the ſaid demiſed premiſes to the ſaid W. T. as aforeſaid, to wit, on, &c.; that they the ſaid S. J. R. and R. M. at a convenient and ſeaſonable time, in the day time, and under and by virtue of the power for that purpoſe contained in the ſaid laſt-mentioned indenture, did with workmen enter and come into and upon the ſaid wharf, parcel of the ſaid demiſed premiſes, to view, ſearch, and ſee the ſtate and condition of the repairs thereof, and upon ſuch entry and view, the ſaid wall, called the wharf-wall hereinbefore mentioned, was then and there found to be ſo ruinous, &c. for want of needful and neceſ-

Proteſtation.

Breach.

ſary repairing, amending, and upholding thereof as aforeſaid, and to then and there want repairs, in this, to wit, that the ſaid wall then and there required, and it was neceſſary and proper to take down and rebuild the ſame from the top unto the level thereof; whereof and of which ſaid decay, defect, and want of reparation ſo then and there found by them the ſaid S. J. R. and R. M. as aforeſaid, they the ſaid S. J. R. and R. M. afterwards, to wit, on, &c. at, &c. left and gave notice and warning in writing at the ſaid demiſed premiſes for the ſaid W. T. and by ſuch notice did then and there require him the ſaid W. T. to repair and amend the ſaid wall accordingly, and purſuant and according to the aforeſaid covenant of the ſaid E. S. and J. P. in that behalf made as aforeſaid, within the ſpace of three months then following: Yet the ſaid S. J. R. and R. M. in fact further ſay, that the ſaid W. T. did not, within the ſaid time or ſpace of three months next after the ſaid notice or warning ſo given and left for and to him the ſaid W. T. as aforeſaid, repair, amend, and make good the ſaid decay, &c. in and as to the ſaid wall, according to the ſaid notice or warning, or in any other manner whatſoever, but omitted and neglected ſo to do, and on the contrary thereof, continued and ſuffered, and permitted the ſaid wall to be, remain, and continue, and the ſame ſtill is ruinous, &c. for want of needful, &c. as aforeſaid, contrary to the tenor and effect, intent and meaning of the ſaid laſt-mentioned indenture of leaſe, and of the covenant of the ſaid E. S. and J. P. in that behalf made as aforeſaid, to wit, at, &c.; and ſo the ſaid S. J. R. and R. M. ſay, that the ſaid W. T. (although often requeſted) hath not kept with them the covenant made between the ſaid E. S. and themſelves and their aſſigns, and the ſaid W. R. deceaſed and his aſſigns, but hath broken the ſame, and to keep the ſame with the ſaid S. J. R. and R. M. hath wholly refuſed, and ſtill refuſes, to the damage of the ſaid S. J. R. and R. M. of two hundred pounds; and therefore they bring their ſuit. V. LAWES.

Conclusion.

Declaration in covenant. Leſſee *Adminiſtratrix* of leſſee, for the non payment of rent for lands.

NORFOLK, to wit. R. K. complains of P. B. widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of J. B. deceaſed, at the time of his death, who died inteſtate, being, &c. in a plea of breach of covenant; for that whereas by certain articles of agreement indented, made, concluded, and agreed upon in the lifetime of the ſaid J. B. deceaſed, to wit, on, &c. at, &c. between the ſaid P. B. (by the name and deſcription therein mentioned) of the one part, and J. S. T. B. H. G. the ſaid J. B. deceaſed, M. B. W. B. &c. &c. (by their ſeveral and reſpective names and deſcriptions therein alſo mentioned) of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid J. B. the ſaid plaintiff now brings here into court, the date whereof is the day and year aforeſaid), reciting amongſt other things, that whereas, &c. &c. [recite ſuch part of the articles as is neceſſary to explain the teſtator's

covenant;

covenant; then recite the covenants which the teſtator has broken, and which are as follow] did for themſelves, &c. jointly, &c. and for his heirs, &c. covenant, &c. in manner following, that they and every of them, and every of their heirs, &c. ſhould and would, on, &c. then next enſuing, and alſo upon each and every tenth day of, &c. in every ſucceeding year, during the ſaid term of twelve years, well and truly pay, or cauſe to be paid to the plaintiff, his executors, &c. the ſum of one ſhilling and ſixpence an acre for every acre of land lying in the ſaid pariſh of, &c. which he, ſhe, or they, or his, her, or their heirs, &c. on or upon any of the ſaid days of payment during the ſaid term, ſhould for the year ſeverally take to farm, or have in occupation as owner or tenant thereof, and ſo in proportion for any leſs quantity than an acre; and alſo that for every twenty ſhillings to be paid as aforeſaid, as a conſideration for the ſaid ſhackage, and over and above the ſame, they the ſaid J. S. and the others, whoſe hands and ſeals were and are to the ſaid articles of agreement ſubſcribed and ſet, their heirs, &c. ſhould and would alſo pay to the ſaid plaintiff, his executors, &c. yearly and every year, upon the ſeveral days above mentioned and appointed for payment of the ſaid ſhackage money, ſuch a proportional ſum of money as they ſhould at the ſame time pay or be charged with, for every twenty ſhillings which their reſpective lands in their occupations in the ſaid pariſh ſhould be aſſeſſed at, in, or by the poor rate there, and ſo in proportion for any leſs ſum, as by the ſaid articles of agreement, relation being thereto had will amongſt other things more fully and at large appear: And the ſaid plaintiff in fact ſays, that the ſaid J. B. after the making of the ſaid articles of agreement, and during the ſaid term of twelve years therein mentioned, to wit, on, &c. died inteſtate, after whoſe death, and during the ſaid term of twelve years, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid J. B. deceaſed, at the time of his death, was duly committed to the ſaid defendant, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that the ſaid J. B. during the ſaid term of twelve years in the ſaid articles of agreement mentioned, that is to ſay, A. D. 1787, and from thence until and at the time of his death, had in his occupation, as tenant thereof, divers, to wit, ſixty-ſeven acres of the ſaid half year land in the ſaid articles mentioned, lying and being in the ſaid pariſh of, &c.; and although upon the death of the ſaid J. B. the ſaid land and the eſtate and intereſt of him the ſaid J. B. therein, as ſuch tenant thereof as aforeſaid at the time of his death, came to and veſted in the ſaid defendant as ſuch adminiſtratrix as aforeſaid; and although the ſaid defendant, as ſuch adminiſtratrix as aforeſaid, thereupon entered into and became and was, and from thence hitherto hath been and ſtill is, in the occupation thereof, as tenant thereof, and although ſhe the ſaid defendant hath always ſince the death of the ſaid J. B. occupied and enjoyed the ſaid land, freed and diſcharged from the exerciſe of the ſaid right of common, feeding, or ſhackage, to which the ſaid plain-

tiff was ſo entitled as aforeſaid, and hath always uſed and occupied the ſame as whole year land, and fed and depaſtured the ſame accordingly, purſuant to the terms of the aforeſaid articles of agreement in that behalf; and although upon the ſaid tenth day of, &c. to wit, at, &c. a large ſum of money of the ſaid ſhackage money, or yearly ſum of one ſhilling and ſixpence in the ſaid articles mentioned, to wit, the ſum of five pounds, being at and after the rate of one ſhilling and ſixpence an acre, for each and every acre of the ſaid half year land ſo occupied by the ſaid J. B. and defendant as aforeſaid, became and was due, owing, and payable from the ſaid defendant, as ſuch adminiſtratrix as aforeſaid, to the ſaid plaintiff for the then next enſuing year of her occupying the ſaid lands, as ſuch tenant thereof, to wit, the year next enſuing the ſaid tenth day of, &c. A. D. 1788: And although he the ſaid plaintiff hath always, from the time of the making of the ſaid articles of agreement, well and truly performed and fulfilled, all things therein on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning of the ſaid articles of agreement, to wit, at, &c.; yet proteſting that the ſaid defendant, adminiſtratrix as aforeſaid ſince the death of the ſaid J. B. hath not performed or fulfilled any thing in the ſaid articles of agreement contained, on the part and behalf of the ſaid J. B. and his adminiſtrators to be performed and fulfilled, the ſaid plaintiff in fact ſaith, that the ſaid defendant did not, upon the ſaid tenth day of, &c. A. D. 1788, at, &c. or at time, pay to the ſaid plaintiff the ſaid ſum of money ſo on that day becoming and being due and payable to him the ſaid plaintiff for and in reſpect of the ſaid half year land, ſo by her and the ſaid J. B. reſpectively occupied as aforeſaid, but omitted and neglected ſo to do, and ſuffered and permitted the ſame to become and be, and the ſame ſtill is in arrear, owing, and unpaid to him the ſaid plaintiff, contrary to the tenor and effect of the ſaid articles of agreement, and of the ſaid covenant of the ſaid J. B. in that behalf made as aforeſaid, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that although upon the ſaid tenth day of, &c. in the ſaid year 1788, the ſaid defendant paid and was then and there rated, aſſeſſed, and charged to the poor rate and of the ſaid pariſh of, &c. for and in reſpect of the ſaid lands ſo by her occupied as aforeſaid, at a certain rate, to wit, at the rate of four ſhillings in the pound or for every twenty ſhillings; whereof the ſaid defendant then and there had notice: Yet the ſaid defendant did not upon the ſaid tenth day of, &c. in the year 1788 aforeſaid, or at any other time, pay, or cauſe to be paid to the ſaid plaintiff, over and above every twenty ſhillings ſo by virtue of the ſaid articles to be paid for the ſaid ſhackage therein mentioned as aforeſaid, ſuch a proportional ſum of money as ſhe the ſaid defendant ſo at that time paid and was charged with, for every twenty ſhillings which the ſaid lands ſo then in her occupation as aforeſaid were then and there aſſeſſed at in and by the poor rate there as aforeſaid, but then and there wholly refuſed and neglected ſo to do, and a large ſum of money, to wit,

wit, the ſum of twenty ſhillings, is ſtill wholly due, in arrear, and unpaid from the ſaid defendant as ſuch adminiſtratrix as aforeſaid, for and in reſpect of ſuch proportional payment as aforeſaid to the ſaid plaintiff for the ſaid year of the ſaid term of twelve years in the ſaid articles mentioned next enſuing the ſaid tenth day of, &c. in the year 1788 aforeſaid, contrary to the tenor and effect, true intent and meaning of the ſaid articles of agreement, and of the ſaid covenant of the ſaid J. B. in that behalf made as aforeſaid, to wit, at, &c.: and ſo the ſaid plaintiff ſaith, that the ſaid defendant, adminiſtratrix as aforeſaid, hath not kept with him the ſaid plaintiff the covenant ſo made by the ſaid J. B. for himſelf and his adminiſtrators as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid plaintiff ſhe the ſaid defendant, adminiſtratrix as aforeſaid, hath hitherto wholly neglected and refuſed, and ſtill refuſes. Damage. Suit. Pledges.

V. LAWES.

Firſt, *Non eſt factum*; ſecond, and for further plea as to the ſaid breach of covenant firſt above aſſigned, the ſaid defendant, by leave of, &c. *actio* ſhe ſays, that ſhe the ſaid defendant, on the ſaid tenth day of &c. A. D. 1788, at, &c. did well and truly pay to the ſaid plaintiff the ſum of one ſhilling and ſixpence an acre for every acre of half year land lying in the ſaid pariſh of, &c. which ſhe upon the ſaid tenth day of &c. in the year laſt aforeſaid, did for the year then enſuing take to farm or had in occupation as owner or tenant thereof, and ſo in proportion for any leſs quantity than an acre, according to the form and effect of the ſaid articles of agreement, and of the covenant of the ſaid J. B. therein in that reſpect contained; and of this the ſaid defendant puts herſelf upon the country, &c.: And for further plea as to the ſaid breach of covenant laſtly above aſſigned, the ſaid defendant by like leave, &c. *actio non*; becauſe ſhe ſays, that the ſaid defendant, on the ſaid tenth day of, &c. A. D. 1788, at, &c. did pay to the ſaid plaintiff over and above every twenty ſhillings, ſo by virtue of the ſaid articles to be paid for the ſaid ſhackage therein mentioned, ſuch a proportional ſum of money as ſhe was at that time charged with or paid for every twenty ſhillings which the lands in her occupation in the ſaid pariſh were aſſeſſed at in or by the poor rate there, and ſo in proportion for every leſs ſum, according to the form and effect of the ſaid articles of agreement, and of the covenant of the ſaid J. B. therein in that behalf mentioned; and of this the ſaid defendant puts herſelf upon the country, &c.: And for further plea &c. &c. [A plea of ſet off for goods ſold.]

Plea, performance. 3d Plea. 4th Plea.

S. LE BLANC.

MR. LAWES drew the replication to the laſt plea by adding the *ſimiliter* to the three firſt pleas and replying to the laſt, that plaintiff was not indebted to defendant *in modo et forma* as defendant hath in his laſt plea alledged.

Declaration by assignee by purchase under a private act of parliament against assignee of lessee, for non-payment of rents, not repairing, yielding up premises out of repair, ploughing up more than half of the land, converting into tillage marshes and marsh ground, whereby, &c. &c. &c.

MIDDLESEX, to wit. Samuel Lindrell, late of, &c. assignee of W. A. and P. A. was summoned to answer James Thobald, assignee of H. N. and S. his wife, in a plea that the said defendant keep with him the said plaintiff the covenants made between the said H. N. and S. his wife, and the said W. A. and P. A. according to the force, form, and effect of a certain indenture thereof made between the said H. N. and S. his wife, and the said W. A. and P. A. and thereupon the said plaintiff, by A. B. his attorney, complains, that whereas before and at the time of the making of the indenture of lease hereafter mentioned to have been made by the said H. N. and S. his wife, to the said W. A. and P. A.; the said H. N. and S. his wife were jointly seised, to wit, in their demesne as of freehold, for the term of their natural lives, and the life of the survivors of them, with reversion in fee, to wit, to the heirs of the said S. if she died without leaving issue of her body by the said H. N. lawfully begotten, of and in the several premises hereinafter mentioned to have been demised by them the said H. N. and S. to the said W. A. and P. A. and being so thereof seised by a certain indenture made the, &c. at, &c. between the said H. N. and S. his wife, by the names of, &c. (the counterpart, &c. *profert in curiâ*) the said H. N. and S. his wife, in consideration, &c. did demise, &c. (recite the indenture as far as the end of covenants, in which you allign breaches, and then go on as follows): And the said plaintiff further says, that by a certain indorsement made on the back of the aforesaid recited indenture of lease, at the time of the execution of the aforesaid indenture of lease the said H. N. and S. his wife did consent, &c. (here recite the indorsement, and then go on as follows), as by the said recited indenture and indorsement thereon made as aforesaid, relation being thereunto had may more amongst other things more fully and at large appear; by virtue of which said demise they the said W. A. and P. A. afterwards, to wit, on, &c. at, &c. entered into all and singular the said demised premises, with the appurtenances, and were thereof possessed for the said term to them thereof demised as aforesaid, the reversion thereof, with the appurtenances belonging, to the said H. N. and S. his wife; and the said H. N. and S. being so seised of the said reversion, with the appurtenances, and the said W. A. and P. A. being so possessed of the said demised premises, with the appurtenances as aforesaid, he the said H. N. to wit, on, &c. at, &c. died, and the said S. N. survived him, by means whereof the said S. N. became solely seised of the said reversion, with the appurtenances, to wit, for the term of her natural life, with such reversion in fee, and the said S. N. being solely seised, the the said S. N. afterwards and whilst the said W. A. and P. A. were possessed of the said demised premises, with the appurtenances, to wit, on, &c. at, &c. died so seised of the said reversion, with the appurtenances, without leaving any issue, of her body lawfully begotten by the said H. N. upon whose death the said reversion of the said demised premises,

Lessor and wife seised for lives and survivor, with reversion in fee to heirs of wife; she dying without issue, &c. &c. &c.

Lease to W. A. and P. A. granted.

Indorsement on the lease.

Lessees enter,

were possessed.

H. N. dies, wife surviving she solely seised.

She dies without issue.

premiſes, with the appurtenances, deſcended and came to B. J. and M. J. wife of P. J. formerly M. J. as heirs at law of the ſaid S. N.; by means whereof the ſaid B. J. M. J. and M. his wife, in right of the ſaid M. became and were ſeiſed in their demeſne as of fee, of and in the ſaid reverſion with the appurtenances, to wit, at, &c.: And the ſaid plaintiff further ſays, that the ſaid P. J. and M. his wife, and B. J. being ſo reſpectively ſeiſed of the ſaid reverſion, with the appurtenances as aforeſaid, and the ſaid W. A. and P. A. being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances as aforeſaid, afterwards, to wit, on, &c. a marriage was intended to be had and ſolemnized between the ſaid B. J. and one W. W. R.; and thereupon afterwards, to wit, on, &c. by a certain indenture of bargain and ſale then and there made between the ſaid B. J. of the one part, and R. R. and J. Q. of the other part (one part of which ſaid indenture, &c. &c.) the ſaid B. J. for the conſiderations therein mentioned, bargained and ſold one undivided moiety of the ſaid reverſion, with the appurtenances (amongſt other things) to the ſaid R. R. and J. Q. to have and to hold the ſame unto the ſaid R. R. and J. Q. their executors, &c. from the day next before the day of the date of the ſaid indenture of bargain and ſale, for and during, and unto the full end and term of one whole year from thence next enſuing, and fully to be complete and ended, as by the ſaid indenture of bargain and ſale, relation being thereto had may more fully appear; by virtue of which ſaid indenture of bargain and ſale, and by force of the ſtatute made for transferring uſes into poſſeſſion, the ſaid R. R. and J. Q. became and were poſſeſſed of the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, for the ſaid term to them thereof granted as aforeſaid, the further reverſion thereof, with the appurtenances, belonging to the ſaid B. J. and his heirs and aſſigns; and being ſo thereof poſſeſſed, and the ſaid further reverſion thereof, with the appurtenances, belonging as aforeſaid, afterwards, to wit, on, &c. by a certain indenture of releaſe *quadripartite* then and there made between the ſaid W. W. R. of the firſt part, the ſaid R. J. of the ſecond part, the ſaid R. R. and J. Q. of the third part, and J. J. and A. H. of the fourth part (the one part of which ſaid laſt-mentioned indenture, ſealed with the ſeals of the ſaid W. W. R. and R. J. he the ſaid plaintiff, &c. &c. reciting the ſaid intending marriage), ſhe the ſaid B. J. with the conſent of the ſaid W. W. R. teſtified by his being a party to and executing the ſaid indenture releaſed the ſaid further reverſion of the ſaid undivided moiety, with the appurtenances (amongſt other things), to the ſaid R. R. and J. Q. to have and to hold the ſame to the ſaid R. R. and J. Q. their heirs and aſſigns, to ſuch uſes, upon ſuch truſts, and for ſuch purpoſes as are in the ſaid indenture in that behalf expreſſed, and amongſt others, from the time of the ſaid marriage taking effect, in truſt for the ſaid W. W. R. for and during the term of his natural life, but ſubject to a certain proviſo therein contained, whereby it was covenanted, by and between the parties thereto,

Deſcent of the reverſion to B. J. and M. J. as heirs at law, &c. &c.

B. J. M. J. and M. in right of M. his wife, became ſeiſed, &c. &c.

Recital of a marriage intended to be had between B. J. and W. W. R.

Leaſe for a year between B. J. and R. R. and J. Q. of an undivided moiety of the reverſion.

R. R. and J. Q. poſſeſſed of the moiety of the reverſion for one year the reverſion in B. J.

Releaſe from B. J. of the moiety to R. R. and J. Q.

In truſt for W. W. R. for life, ſubject to a proviſo enabling the ſame leaſees to ſell, &c. &c.

that the ſaid R. R. and J. Q. with the conſent of the ſaid W. W. R. and B. might ſell and diſpoſe of the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, for the beſt price that could be got for the ſame, as by the ſaid indenture of releaſe, relation being thereto had may more fully appear; by means whereof, and by force of the ſtatute made for the tranſferring of uſes into poſſeſſion, the ſaid R. R. and J. Q. afterwards, to wit, on, &c. became and were ſeiſed in their demeſne, as of fee of and in the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, as aforeſaid, with power to ſell the ſame as aforeſaid: And the ſaid plaintiff further ſaith, that afterwards, to wit, on, &c. the ſaid intended marriage between the ſaid W. W. R. and R. J. took effect, and was had and ſolemnized, to wit, at, &c.: And the ſaid plaintiff further ſaith that the ſaid R. R. and J. Q. being ſo ſeiſed of one undivided moiety of the ſaid reverſion, with the appurtenances as aforeſaid, with power to ſell the ſame as aforeſaid; and the ſaid P. J. and M. his wife, in right of the ſaid M. being ſo ſeiſed of the ſaid other undivided moiety of the ſaid reverſion, with the appurtenances as aforeſaid, afterwards, to wit, on, &c. by a certain indenture then and there made between the ſaid P. J. and M. his wife, &c. of the one part, and M. S. of, &c. of the other part (one part of which ſaid indenture, ſealed, &c. &c. the ſaid P. J. did covenant, and the ſaid M. did conſent and agree to acknowledge and levy unto the ſaid M. S. and his heirs, a fine *ſur connuſance de droit, &c.* of all the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, by the deſcription in the ſaid indenture ſpecified, which ſaid fine it was thereby declared ſhould be and enure to and for the proper uſe and behoof of the ſaid M. S. his heirs and aſſigns for ever, in truſt to and for the only proper uſe and behoof of the ſaid P. J. his heirs and aſſigns: And the ſaid plaintiff further ſaith, that afterwards, in Michaelmas term, in, &c. in the court of our lord the now king, before the then juſtices of the bench at Weſtminſter, in the county of Middleſex, a certain fine *ſur connuſance de droit* was levied in due form of law, in purſuance of the ſaid indenture made by the ſaid P. J. and M. his, &c. to the ſaid M. S. of the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, to wit, at, &c.; by means whereof the ſaid P. J. afterwards, to wit, on, &c. became and was ſeiſed in his demeſne as of fee, of and in the ſaid undivided moiety of the reverſion, with the appurtenances, and being ſo thereof ſeiſed, and the ſaid R. R. and J. Q. being ſo ſeiſed of the ſaid other undivided moiety of the ſaid reverſion, with the appurtenances as aforeſaid, with power to ſell the ſame as aforeſaid; and the ſaid W. A. and P. A. being ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, for the term to him thereof demiſed as aforeſaid, the ſaid P. J. afterwards, to wit, on, &c. died ſo ſeiſed of and in the ſaid undivided moiety of the ſaid reverſion, with the appurtenances, upon whoſe death the ſame deſcended and came unto J. P. J. his only ſon and heir at law,

R. R. and J. Q. ſeiſed.

Marriage between W. W. R. and B. J.

Indenture between P. J and M. his wife, and M. S. and covenant to levy a fine to M. S. &c.

For the uſe of the ſaid M. S. in truſt for the ſaid P. J. his heirs and aſſigns, &c.

Fine levied.

J. dies,

law, an infant under the age of twenty-one years, to wit, of the age of ſixteen years, to wit, at, &c.; and the ſaid J. P. J. R. R. and J. Q. being ſo reſpectively ſeiſed, and the ſaid W. A. and P. A. being ſo poſſeſſed of the ſaid demiſed premiſes as aforeſaid for the ſaid demiſed term, the ſaid P. A. afterwards, to wit, on, &c. died ſo poſſeſſed, and the ſaid W. A. then and there ſurvived him, and the ſaid W. A. then and there ſurvived him and became ſolely poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, for the then reſidue and remainder of the ſaid term demiſed, to wit, at, &c. and being ſo ſolely poſſeſſed for the term aforeſaid, and demiſed aforeſaid, and the ſaid J. P. J. being ſo ſeiſed of one undivided moiety of the ſaid reverſion, with the appurtenances, and the ſaid R. R. and J. Q. being ſo ſeiſed of the ſaid other undivided moiety of the ſaid reverſion, with the appurtenances aforeſaid, with power to ſell the ſame as aforeſaid afterwards, and whilſt the ſaid W. A. was poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, for the time aforeſaid ſo demiſed as aforeſaid, to wit, at a parliament of our ſovereign lord the now king, holden at Weſtminſter, in the county of Middleſex, by prorogation in, &c. and in the ſixth year of his reign, intituled, "An Act, &c. (ſet forth the title of the act *verbatim*), reciting (among other things), that the ſaid W. W. R. and P. J. in and by an agreement in writing, bearing date, &c. contracted with the ſaid plaintiff for ſale of the ſaid farm and premiſes, at, &c. in, &c. (being the premiſes aforeſaid, with the appurtenances) at and for the price or ſum of one thouſand pounds, to be paid on or before Chriſtmas then next, and the purchaſer to hold the premiſes from Michaelmas day next enſuing the date of the aforeſaid written agreement: And whereas alſo reciting that the ſaid P. J. departed this life on, &c. before the ſaid agreement with the ſaid plaintiff was carried into execution; and alſo reciting the deſcent of an undivided moiety of the reverſion, with the appurtenances, to the ſaid J. P. J. as the only ſon and heir of the ſaid P. J. ſubject to the ſaid contract for ſale with the ſaid plaintiff being carried into execution; and alſo reciting, that the ſaid J. P. J. on his attaining the age of twenty-one years, would have a power and abſolute right to ſell and diſpoſe of the inheritance in fee-ſimple of the ſaid undivided moiety of the ſaid reverſion in the premiſes aforeſaid, with the appurtenances: It was by the ſaid act enacted, that the aforeſaid undivided moiety or half-part of and in the ſaid demiſed premiſes (amongſt other things), with the appurtenances, to wit, the ſaid undivided moiety of the reverſion aforeſaid, with the appurtenances, with their and every of their rights, members, and appurtenances, and the reverſion and reverſions, and remainder and remainders, yearly and other rents, iſſues, and profits thereof, and every part and parcel thereof, and all the legal and equitable eſtate, right, and title, veſted or contingent intereſt, property, poſſeſſion, claim and demand whatſoever of them the ſaid M. S. and J. P. J. or of any perſon or perſons for them or any of them, of, into, and out of the ſame here-

leaving iſſue J. P. J. his heir at law, an infant, &c.

P. A. one of the leſſees, died the other leſſee ſurviving, ſolely poſſeſſed, &c. &c. &c.

An act of parliament to appoint truſtees to ſell for the uſe of J. P. J.

Reciting an agreement between W. W. R. and P. J. to ſell the ſame to plaintiff.

P. J. died before the agreement was carried into execution.

Deſcent to J. P. J. ſubject to ſuch contract, &c.

That J. P. J. when of age would have power to ſell. Enacted that ſuch moiety,

hereditaments and premiſes, or any of them, or any part or parcel thereof, ſhould from and after, &c. be ſettled upon and veſted in the ſame, were thereby from thenceforth ſettled upon and veſted in F. F. of, &c. and J. F. of, &c. their heirs and aſſigns, to the uſe and behoof of them the ſaid F. F. and J. F. their heirs and aſſigns for ever upon truſt, that they the ſaid F. F. and J. F. and the ſurvivor of them, and the heirs of ſuch ſurvivor, ſhould and would, upon payment of a moiety or half-part of the ſaid ſum of one thouſand pounds by the ſaid plaintiff, his heirs, executors, or adminiſtrators, or in caſe he or they ſhould decline and not proceed in the ſaid purchaſe, then upon payment of a moiety of the ſum of one thouſand pounds, or any greater ſum or ſums of money by any other perſon or perſons, who with the approbation of the ſaid M. J. during her life, ſhould agree to purchaſe the hereditaments and premiſes ſo agreed to be purchaſed by the ſaid plaintiff as aforeſaid unto the ſaid F. F. or J. F. or ſurvivor of them, or the heirs, executors, or adminiſtrators of ſuch ſurvivor, for the purpoſes thereinafter mentioned, by good and ſufficient conveyances and aſſurances in the law, convey and aſſure the aforeſaid undivided moiety or half-part of and in all and every the aforeſaid hereditaments and premiſes thereinbefore mentioned and deſcribed to be ſituate, lying and being in, &c. being the premiſes aforeſaid, to wit, the aforeſaid undivided moiety, &c. and contracted for and agreed to be purchaſed by the ſaid plaintiff as aforeſaid, with their and every of their rights, members, and appurtenances, and the fee-ſimple and inheritance thereof unto and to the uſe of the ſaid plaintiff, his heirs and aſſigns, or unto or to the uſe of ſuch other perſon or perſons who ſhould contract and agree for the purchaſe of the ſame premiſes, and his or their heirs and aſſigns reſpectively, as by the ſaid act, relation being thereto had, will (amongſt other things) more fully and at large appear: And the ſaid plaintiff further ſaith, that after the making of the ſaid act, to wit, on, &c. by a certain indenture of bargain and ſale then and there made between the ſaid R. R. J. Q. F. F. and J. F. (with their reſpective additions) of the one part, and the ſaid plaintiff of the other part (one part of which ſaid, &c.) the ſaid R. R. J. Q. J. F. and J. F. for the conſiderations therein mentioned, bargained and ſold the whole of the aforeſaid reverſion of and in the aforeſaid premiſes, with the appurtenances (amongſt other things) to the ſaid plaintiff, to have and to hold the ſame unto the ſaid plaintiff, his executors, adminiſtrators, and aſſigns, from the day next before the day of the date of the ſaid indenture of bargain and ſale, for and during, and unto the full end and term of one whole year from thence next enſuing, and fully to be complete and ended, as by the ſaid indenture of bargain and ſale, (relation being thereto had) may more fully appear; by virtue of which ſaid indenture of bargain and ſale, and by force of the ſtatute, &c. the ſaid plaintiff became and was poſſeſſed of the whole of the ſaid reverſion, with the appurtenances, for the ſaid term to him thereof granted as aforeſaid, the further reverſion thereof, with

Should be veſted in F. F. and J. F. to their uſe, in truſt, that they ſhould, upon payment, &c. ſell to plaintiff, &c.

Plaintiff poſſeſſed for a year.

with the appurtenances, belonging to the ſaid R. R. J. Q. F. F. and J. F. and their heirs and aſſigns, and being ſo poſſeſſed thereof, and the ſaid further reverſion thereof, with the appurtenances, belonging as aforeſaid; and the ſaid W. A. being ſo poſſeſſed of and in the ſaid demiſed premiſes, with the appurtenances as aforeſaid, afterwards, to wit, on, &c. by a certain indenture of releaſe then and there made between R. R. and J. Q. of the firſt part, the ſaid W. W. R. and B. his wife of the ſecond part, F. F. and J. F. of the third part, and the ſaid plaintiff of the fourth part (the one part of which, &c.) for and in conſideration of the ſum of five hundred pounds of lawful, &c. he the ſaid R. R. and J. Q. with the conſent of the ſaid W. W. R. and B. his wife, teſtified as therein is expreſſed, and alſo in conſideration of the ſum of five hundred pounds of like lawful, &c. to the ſaid J. F. and J. F. making together one thouſand pounds in hand, well and truly paid by the ſaid plaintiff at or before the enſealing and delivery of the ſaid indenture of releaſe, and for the conſiderations therein mentioned, they the ſaid R. R. and J. Q. by the conſent, approbation, and direction of the ſaid W. W. R. and B. his wife, teſtified as therein is expreſſed, and alſo the ſaid F. F. and J. F. releaſed, and the ſaid W. W. R. and B. his wife confirmed the ſaid further reverſion, with the appurtenances (amongſt other things) to the ſaid plaintiff, to have and to hold the ſame unto the ſaid plaintiff, his heirs and aſſigns to the only proper uſe and behoof of the ſaid plaintiff, his heirs and aſſigns for ever, as by the ſaid indenture of releaſe, relation being thereto had may (amongſt other things) more fully appear; by means whereof, and by the force of the ſtatute, &c. the ſaid plaintiff became and was, and ſtill is ſeiſed in his demeſne as of fee of and in the ſaid reverſion, with the appurtenances, to wit, at, &c.; and being ſo ſeiſed, and the ſaid W. A. being ſo poſſeſſed of and in the ſaid demiſed premiſes, with the appurtenances, as aforeſaid, for the term aforeſaid, afterwards, to wit, on, &c. all the eſtate, right, title, term of years then to come and unexpired, property, intereſt, claim, and demand whatſoever of him the ſaid W. A. of, in, and to the ſaid demiſed premiſes, with the appurtenances, by aſſignment thereof, then and there legally made, came to, and veſted in the ſaid defendant; whereby the ſaid defendant afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes, with the appurtenances, and was thereof poſſeſſed for the reſidue of the ſaid term of twenty-one years then to come and unexpired, the reverſion thereof, with the appurtenances, belonging to the ſaid plaintiff and his heirs; and being ſo thereof poſſeſſed, and the ſaid reverſion, with the appurtenances, belonging to the ſaid plaintiff as aforeſaid, he the ſaid defendant continued ſo poſſeſſed of the ſaid demiſed premiſes, with the appurtenances, until the end, determination, and expiration of the ſaid term of twenty-one years, which ſaid term, by courſe of time, ended, determined, and expired on, &c. according to the ſtile and computation of time now uſed within this kingdom, being the feaſt of, &c. according to the old ſtile, &c. at the time of the making the

Releaſe to plaintiff from truſtees.

Plaintiff ſeiſed in fee.

Premiſes come to defendant by aſſignment.

Defendant poſſeſſed for the reſidue of the term.

Defendant continues in poſſeſſion to the end of the term.

the ſaid indenture of leaſe, to wit, at, &c.; and although he the ſaid plaintiff always, from the time of the making the ſaid indenture of releaſe from the ſaid R. R. J. Q. W. W. R. and B. his wife, F. F. and J. F. to the plaintiff, until the end and determination and expiration of the ſaid term of twenty-one years, well and truly performed all and ſingular the covenants, matters, and things contained in the ſaid indenture of leaſe ſo made by the ſaid H. N. and S. his wife, unto the ſaid W. A. and P. A. on the part and behalf of the ſaid H. N. and S. his wife, and their aſſigns, to be performed and fulfilled according to the force and effect of the ſaid indenture, and of the covenants of the ſaid H. N. and S. his wife in that behalf, to wit, at, &c.; yet proteſting that the ſaid defendant, ſince the aſſignment made to him as aforeſaid, has not performed or fulfilled any thing in the ſaid indenture of leaſe made by the ſaid H. N. and S. his wife unto the ſaid W. A. and P. A. and their aſſigns, to be performed and fulfilled according to the force and effect of the ſaid indenture, the ſaid plaintiff in fact ſaith, that twenty-one pounds of the ſaid yearly rent or ſum of forty two pounds (payable the laſt year of the ſaid demiſed term) for the laſt half-year of the ſaid demiſed term, ended on the firſt day of, &c. according to the old ſtyle, &c. &c. being the tenth of, &c. in that year, according to the new ſtyle, &c. &c. to wit, at, &c. became due and owing from the ſaid defendant to the ſaid plaintiff, and ſtill are in arrear and unpaid, contrary to the form and effect of the ſaid indenture of leaſe ſo made between the ſaid H. N. and S. his wife, and the ſaid W. A. and P. A. and of the covenants aforeſaid of the ſaid W. A. and P. A. in that behalf made as aforeſaid, to wit, at, &c. And the ſaid plaintiff further ſays, that after he became ſeiſed of the ſaid term of the ſaid premiſes, with the appurtenances, and after the ſaid aſſignment to the ſaid defendant, to wit, on, &c. the ſaid capital meſſuage mentioned in and demiſed by the ſaid laſt-mentioned indenture of leaſe, and the barns, ſtables, &c. thereto belonging, parcel of the ſaid demiſed premiſes, were out of repair, ruinous, and in great decay in the walls, floors, beams, joiſts, and other timbers thereof, and in the roofs, tilings, flatings, thatchings, and coverings thereof, and in the ceilings, wainſcotings, doors, door-caſes, windows, window-frames, and pavements thereof, for want of needful and neceſſary repairing and amending thereof, and the drains, gutters, and watercourſes thereof were ſtopped up, filled, and choaked up for want of needful and neceſſary cleanſing and ſcouring thereof, and all and ſingular the hedges, &c. &c. of and belonging to the lands, parcel of the ſaid premiſes, with the appurtenances, were ruinous, proſtrate, broken down, rotten, and in great decay for want of needful and neceſſary

Performance by plaintiff.

Proteſtation that the defendant has not performed.

1ſt breach, non-payment of rent.

If a good breach be not aſſigned, defendant may demur generally, Wi. Ent. 120.

2d breach, premiſes out of repair, meſſuage and buildings, &c.

Drains belonging to the ſame,

hedges, &c.

Breach for want of repairs in the condition of the covenant is ſufficient, Lut. 329; but ſee 1. Bac. 543. and the way there mentioned agreeing with the precedent, is certainly the beſt, for upon the defendant's general plea, the plaintiff would ſtill be bound to deſcend to particulars, Cro. Jac. 170.

repairing and amending thereof, and all and ſingular the ditches drains, and watercourſes in and belonging to the ſaid land were filled and choaked up with filth, mire, dirt, and rubbiſh, for want of needful and neceſſary cleanſing and ſcouring thereof, although the ſaid plaintiff was always, after he became ſeiſed of the ſaid premiſes, and during the continuance of the ſaid leaſe, ready and willing to allow, to and for him the ſaid defendant, ſufficient rough timber for the purpoſe of repairing and amending the defects aforeſaid, as far as the ſame could be found on the premiſes, to be taken by the aſſignment of the ſaid plaintiff, according to the tenor of the ſaid indenture of leaſe ſo made by the ſaid H. N. and S. his wife to the ſaid W. A. and P. A. and the ſaid ſeveral premiſes ſo being out of repair, ruinous, and in decay, foul, choaked up, ſtopped up and obſtructed for want of needful and neceſſary repairing, amending, cleanſing and ſcouring thereof, he the ſaid defendant ſuffered and permitted the ſame to be and continue out of repair, ruinous, and in great decay, foul, choaked up, and obſtructed from thence until the end and expiration of the ſaid demiſed term, and at the end and expiration thereof, left and yielded up the ſame premiſes to the ſaid plaintiff ſo out of repair, &c. contrary to the tenor and effect of the ſaid indenture of leaſe, and of the aforeſaid covenant of the ſaid W. A. and P. A. made in that behalf as aforeſaid, to wit, at, &c.: And the ſaid plaintiff further ſaith, that the ſaid defendant, after the ſaid plaintiff ſo became ſeiſed, and after the ſaid aſſignment to the ſaid defendant, and during the continuance of the aforeſaid term in one year, to wit, on, &c. ploughed up, broke up, and converted into tillage, and in that year, to wit, in, &c. had and uſed in tillage above and more than one half of the lands demiſed by the ſaid indenture made between, &c. as aforeſaid, to wit, fifteen acres over and above the one-half of the ſaid lands; by means whereof, and according to the tenor of the ſaid laſt-mentioned indenture, and of the ſaid covenant of the ſaid W. A and P. A. by them in that behalf made as aforeſaid, a further rent, to wit, a rent or ſum of ſeventy-five pounds, being at and after the rate of five pounds an acre for every acre of the ſaid fifteen acres of land ſo ploughed, &c. payable from the ſaid defendant to the ſaid plaintiff, and that the ſaid laſt-mentioned rent ſo becoming payable as aforeſaid, ſeventy-five pounds for the ſaid fifteen acres of land ſo ploughed, &c. did on, &c. (according to old ſtyle aforeſaid), in, &c. being the tenth, &c. in the year (according to new ſtyle aforeſaid), at and on that feaſt-day, &c. become due and payable from the ſaid defendant to the ſaid plaintiff, and the ſame is ſtill in arrear and unpaid, &c. (as before): And the ſaid plaintiff further ſaith, that the ſaid defendant, after the ſaid plaintiff ſo became ſeiſed as aforeſaid, &c. (as before), to wit, on, &c. dug up, ploughed up, broke up, and coverted into tillage, divers, to wit, fifteen acres of the ſaid marſhes and marſh ground, excluſive of all over and above the ſaid eight acres mentioned in the ſaid indorſement ſo made on the ſaid laſt-mentioned indenture of leaſe; by means whereof, and according

Plaintiff ready to allow rough timber as far as the ſame could be found on the premiſes, to be taken by aſſignment;

permitted the ſame to continue out of repair;

yielding up the ſame out of repair, &c.

3d breach, for ploughing above half of the land, whereby an additional rent of five pounds an acre accrued.

4th breach, for ploughing more than eight acres of marſh ground mentioned in the indorſement, whereby, &c.

according, &c. (as in the third breach): *(a)* And ſo the ſaid plaintiff ſaith, that the ſaid defendant (although often requeſted, &c.) hath not kept the ſaid covenant ſo made by the ſaid W. A. and P. A. with the ſaid H. N. and S. his wife as aforeſaid, with him the ſaid plaintiff, but hath broken the ſame, and to keep the ſame with him the ſaid plaintiff hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to wit, at, &c.; wherefore the ſaid plaintiff ſaith he is injured, &c. &c. &c. J. MORGAN.

(*a*) Not abſolutely neceſſary, 4. Bac. 18.

Declaration on demiſe of an eſtate to defendant, upon conſideration that defendant ſhould lay upon the land a certain quantity of lime yearly, for which plaintiff was to allow two pounds *per annum*. Plaintiff paid the two pounds, but defendant never laid any lime on the ground.

CUMBERLAND, *ſs.* John Pitt *v.* Joſeph Smith: for that whereas by certain articles of agreement made, concluded, and agreed upon the tenth day of October, A. D. 1775, to wit, at, &c. in, &c. between ſaid plaintiff of the one part, and ſaid defendant of the other part (one part of which articles, ſealed the ſeal of ſaid defendant, and bearing date the day and year, &c. he ſaid plaintiff now brings into court here) he ſaid plaintiff did ſet and to farm-let all his eſtate at, &c. together with the common rights and ſheep thereunto belonging (only excepting and reſerving for his own uſe the parcel of houſes adjoining Waterwood which he ſaid defendant then dwelt in, together with the garth and coppy) to ſaid defendant for the term of one year, and ſo on for nine years, capable of determination as in ſaid articles is mentioned, at and under the yearly rent, and ſubject to ſuch allowances and deductions as is and are in the ſaid articles in that reſpect ſpecified, and ſaid defendant to enter upon the eſtate the fifteenth day, &c.; and it was by ſaid articles farther agreed, by and between ſaid parties thereto, that ſaid defendant ſhould lay on eighty buſhels of lime yearly upon ſaid eſtate (that is to ſay, the ſaid eſtate ſo demiſed to him as aforeſaid), only he ſhould be at liberty to lay on the laſt years eighty buſhels in lieu of the years of ſaid term of nine years; and that *ſaid plaintiff ſhould pay two pounds ſterling yearly to ſaid defendant towards ſaid lime*, as by the ſaid indenture of agreement, reference being thereunto had, will amongſt other things more fully and at large appear; by virtue of which ſaid articles of agreement he ſaid defendant, after the making thereof, to wit, on, &c. entered into ſaid eſtate ſo demiſed to him as aforeſaid, with the appurtenances, and became and was, and from thence hitherto hath been, and ſtill is poſſeſſed thereof, and of the ſaid ſheep belonging thereunto, under and by virtue of ſaid articles and the aforeſaid demiſe, to wit, at, &c.; and although he ſaid plaintiff, from the time of making of ſaid articles of agreement, hitherto hath well and truly performed all things contained in ſaid articles on his part and behalf to be performed and fulfilled, according to the true intent and meaning of ſaid articles, to wit, at, &c.; yet proteſting that ſaid defendant hath not performed or fulfilled any thing in ſaid articles contained on his part and behalf to be performed and fulfilled: In fact ſaid plaintiff ſaith, that although

although ſeven years and more of ſaid term in ſaid articles of agreement mentioned, and thereby demiſed as aforeſaid, have long ſince elapſed; *and although he ſaid plaintiff hath, during all ſuch time, paid to ſaid defendant the ſum of two pounds ſterling yearly towards ſaid lime ſo by ſaid defendant agreed to be laid on ſaid eſtate ſo to him demiſed as aforeſaid, according to the tenor and effect, true intent and meaning of ſaid articles of agreement*; yet ſaid defendant did not yearly, or in any other manner during ſaid ſeven years, or any part thereof, lay in or upon ſaid eſtate ſo to him demiſed as aforeſaid, eighty buſhels of lime, according to the tenor and effect of ſaid articles of agreement, or any other quantity of lime whatſoever. but on the contrary wholly neglected and omitted ſo to do, and therein wholly failed and made default, and the ſaid lime is ſtill wholly unlaid upon ſaid eſtate, contrary to the tenor and effect of, &c. and the covenant of him ſaid defendant in that behalf made as aforeſaid, to wit, at, &c. whereby ſaid eſtate of ſaid plaintiff ſo demiſed to ſaid defendant as aforeſaid, and the ſoil thereof hath been and is conſiderably impoveriſhed and diminiſhed in its worth and value, to wit, at, &c. &c. (A 2d Count like the firſt, omitting what is in Italic.) Damages fifty pounds.

V. LAWES.

Declaration, leſſor againſt leſſee, non payment of parochial taxes of premiſes, contiguous to thoſe demiſed to defendant, &c. &c.

MIDDLESEX, *ſs.* Robert Oliver, late of, &c. was ſummoned to anſwer unto David Cock, eſquire, in a plea that the ſaid Robert keep with him the ſaid D. C. the covenant made between the ſaid D. C. and the ſaid R. O. according to the force, form, and effect of a certain indenture ſo thereof made between the ſaid D. C. and R. O.; for that whereas by a certain indenture made the twentieth day of, &c. to wit, at, &c. in, &c. between the ſaid D. C. by the name of D. C. of the pariſh of, &c. eſquire, of the one part, and the ſaid R. O. by the name of R. O. of the pariſh of, &c. ſhoemaker, of the other part (the counterpart of which ſaid indenture of leaſe, ſealed with the ſeal of the ſaid R. O. he the ſaid D. C. now brings into court here, the date whereof is the ſame day and year aforeſaid), the ſaid D. C. for and in conſideration of the yearly rent, &c. &c. &c. (here copy the leaſe), as by the ſaid indenture (amongſt other things), relation being thereto had may more fully and at large appear; by virtue of which ſaid indenture of leaſe he the ſaid R. O. afterwards, to wit, on, &c. entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and was and ſtill is thereof poſſeſſed, and although the ſaid D. C. always from the time of the making of the ſaid indenture of leaſe, hitherto hath well and truly performed and fulfilled all things therein contained on his part, &c. according to the true intent and meaning of the ſaid indenture; yet proteſting that the ſaid R. O. hath not performed or fulfilled any thing in the ſaid indenture contained on his part and behalf to be performed and fulfilled, he the ſaid D. C. in fact ſaith, that after the making of the aforeſaid indenture of leaſe, and during the continuance of the term ſo demiſed as aforeſaid, to wit, from the

the feaſt of the Birth of Our Lord Chriſt, in the year 1769, until the feaſt of, &c. in the year 1772, the back houſes, buildings, ground, and premiſes, with the appurtenances, in the ſaid indenture mentioned, and at the time of the making of the leaſe aforeſaid, and from thence hitherto ſtanding and being behind the meſſuage or tenement and premiſes by the ſaid indenture demiſed, or agreed to be demiſed, unto the ſaid R. O. belonging to the ſaid D. C. and for which the ſaid R. O. according to the tenor of his covenant aforeſaid, ought to have paid the parochial taxes, charges, aſſeſſments, and impoſitions taxed, charged, aſſeſſed, and impoſed thereon, during the continuance of the term aforeſaid, were duly and legally taxed, charged, aſſeſſed and impoſed with a certain parochial rate or aſſeſſment, to wit, to the rate for the relief of the poor of the pariſh of, &c. in, &c. (in which ſaid pariſh the ſame premiſes during all the time aforeſaid were ſituate), commonly called the poor rate, to wit, at the rate or ſum of fifteen ſhillings by the quarter of a year, for three pounds by the year, and that on the feaſt-day of the Birth of, &c. a large ſum of money, to wit, the ſum of nine pounds of and for the rate aforeſaid, for three years then laſt paſt, and ending at the feaſt-day laſt-mentioned, at that feaſt in the year laſt aforeſaid, became due and owing for the ſaid rate or aſſeſſment ſo made on the ſaid back houſes, and building, ground, and premiſes in that behalf before mentioned, and which were aſſeſſed in form aforeſaid, which ſaid ſum of nine pounds ought to have been paid by the ſaid R. O. according to the tenor of the aforeſaid indenture, and of his aforeſaid covenant in that behalf made as aforeſaid, whereof the ſaid R. O. afterwards, to wit, on, &c. had notice, and was then and there requeſted by the ſaid D. C. to pay the ſame, to do which he the ſaid R. O. then and there and from thence hitherto wholly neglected and refuſed, and the ſaid R. O. ſtill refuſes to pay the ſame or any part thereof, contrary to the form and effect of the aforeſaid indenture of leaſe, and of the covenant aforeſaid of him the ſaid R. O. in that behalf made as aforeſaid; whereupon he the ſaid D. C. afterwards, to wit, on, &c. was forced and obliged to pay the ſaid ſum of nine pounds; and ſo the ſaid D. C. ſaith, that the ſaid R. O. (although often requeſted), by the ſaid D. C. hath not kept his ſaid covenant ſo by him made with the ſaid D. C. as aforeſaid, but hath broken the ſame, and to keep the ſame with the ſaid D. C. he the ſaid R. O. hath hitherto wholly refuſed, and ſtill refuſes ſo to do, to wit, at, &c.; wherefore the ſaid D. C. ſaith he is injured, and hath ſuſtained damage to the value of thirty pounds; and thereupon he brings his ſuit, &c. &c.

J. MORGAN.

Declaration ... covenant by ... assignee of a ... version again... defendant ... leaving pre... mises demised ... him out of ... pair, taking ... way the loc... &c. *per qu...* plaintiff was ... to great expe... in repairing ...

LONDON, *ff.* J. V. assignee of V. L. complains of T. M. being, &c. for that whereas the ſaid V. L. before and at the time of the making of the indenture of leaſe hereafter mentioned, was ſeiſed in his demeſne as of fee of and in the ſeveral premiſes thereby demiſed to the ſaid T. M. and being ſo ſeiſed by a certain indenture made the ſeventeenth day of, &c. to wit, at, &c. between the ſaid V. L. of the one part, and the ſaid T. M. of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid T. M. and bearing date the day and year aforeſaid, he the ſaid V. L now brings into court here), the ſaid V. L. for the conſiderations therein mentioned, did demiſe, leaſe, ſet, and to farm let unto the ſaid T. M. all that brick meſſuage, tenement, or dwelling houſe, with the outhouſes, &c. thereunto belonging, ſituate, lying, and being on the ſouth ſide of Budge-row, in the pariſh, &c. abutting eaſt, &c. on the weſt, &c and ſouth, &c. which ſaid meſſuage or tenement thereby demiſed was, or then late was thereby demiſed, was or late was commonly called or known by the name or ſign of the Salutation Tavern and was formerly in the poſſeſſion of William Fall, but then or late of J. P. together with all and ſingular erections, buildings, &c. whatſoever to ſaid meſſuage or tenement, yard and premiſes before-mentioned, or any part thereof, or therewith uſually held, uſed, occupied, or enjoyed, ground and ſoil of which thereby before demiſed meſſuage, tenement, yard, and premiſes, did contain the meaſure and form mentioned in the plan delineated under the ſaid indenture), and all all that brick dwelling-houſe, or tenement, formerly in the poſſeſſion of the ſaid W. F. but then or late of the ſaid J. P. his undertenants, or aſſigns, ſituate and being in Tower court, in the pariſh, &c. and adjoining ſouth to the meſſuage or tenement therein before demiſed, and containing the ſeveral rooms following, that is to ſay, one cellar with a door, &c. into the ſame from the ſaid court, one warehouſe, or room, with ſhutters to the window, and a paſſage leading from the ſame into the ſaid tavern, with a door into the ſaid court, and a lock and key to the ſame, one large vault, a houſe of eaſement, with a door, &c. to have and to hold the ſaid meſſuage or tenements, vaults, &c. thereby demiſed or mentioned, or intended ſo to be, with their and every of their appurtenances, unto the ſaid T. M. his executors, adminiſtrators, and aſſigns, from the feaſt day of the Birth of Our Lord Chriſt next enſuing the date of the ſaid indenture, for and during and unto the full end and term of twenty-one years from thence next enſuing, and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term, unto the ſaid V. L. his heirs, or aſſigns, the rent or ſum of nine pounds of lawful, &c. by two half yearly payments, on the feaſt-days, &c. the firſt of ſuch half yearly payments to be made on, &c.; and the ſaid T. M. did thereby for himſelf, his executors, adminiſtrators, and aſſigns, covenant, promiſe, and agree to, and with the ſaid V. L. his heirs, and aſſigns, in manner following, that is to ſay (amongſt other

other things), that he the ſaid T. M. his executors, adminiſtrators, and aſſigns, ſhould and would at his and their own proper coſts and charges, within the ſpace of two years from the day of the date of the ſaid indenture, put, or cauſe and procure all and ſingular the ſaid thereby demiſed meſſuages or tenements and premiſes to be put into good and ſubſtantial repair, and ſhould and would from time to time, and at all times hereafter during the continuance of that demiſe, when, where, and as often as need or occaſion ſhould be or require, ſufficiently repair, uphold, ſupport, &c. and keep the ſaid meſſuages or tenements, &c. and other the premiſes thereby demiſed, and every part thereof, and all other erections and buildings which during the ſaid term thereby granted ſhould or might be erected, built, or ſet up in or upon the ſaid thereby demiſed premiſes, or any part thereof, in by and with all and all manner of needful and neceſſary reparations and amendments whatſoever, when and as often as need or occaſion ſhould be or require, and the ſaid ſeveral meſſuages and tenements, erections, &c. being ſo well and ſufficiently ſupported, ſuſtained, &c. and kept as aforeſaid, at the expiration or other ſooner determination of that demiſe which ſhould firſt happen, ſhould and would peaceably and quietly leave, ſurrender, and yield up unto the ſaid V. L. his heirs, or aſſigns, together with all the wainſcots and other things fixed or to be fixed to the freehold of the ſaid ſeveral meſſuages, yards, and premiſes thereby demiſed, or any part thereof, together alſo with all ſuch other things as ſhould be mentioned and expreſſed in the ſchedule or inventory thereof, intended to be indorſed upon the ſaid indenture, when and as ſoon as the ſaid premiſes ſhould be repaired as aforeſaid, as by the ſaid indenture, relation being thereunto had (amongſt other things more fully and at large appears), by virtue of which ſaid demiſe, he the ſaid T. M. afterwards, on, &c. entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and was poſſeſſed thereof for the ſaid term to him thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging unto the ſaid V. L. and the ſame reverſion being ſo belonging as aforeſaid, afterwards, on, &c. by a certain indenture of bargain and ſale then and there made between the ſaid V. L. of the one part, and the ſaid J. V. of the other part (one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal of the ſaid V. L. now brings into court here, the date whereof is the ſame day and year laſt aforeſaid), the ſaid V. L. for the conſiderations therein mentioned, bargained and ſold unto the ſaid J. V. the ſaid reverſion, with the appurtenances, of and in a certain part of the ſaid demiſed premiſes (amongſt other things), that is to ſay, of and in the ſaid meſſuage or tenement, ſituate and being in Tower-court aforeſaid, in, &c. to have and to hold the ſame, with the appurtenances, unto the ſaid J. V. his executors, adminiſtrators, and aſſigns, from the day next before the day of the date of the ſaid indenture of bargain and ſale, for and during and unto the full end and term of one whole year from thence next enſuing, and fully to be complete and ended, as by

the ſaid indenture of bargain and ſale, relation being thereto had may more fully appear, by virtue of which ſaid indenture of bargain and ſale, and by force of the ſtatute made for transferring uſes into poſſeſſion, the ſaid J. V. became and was poſſeſſed of the ſaid reverſion of and in the ſaid laſt-mentioned meſſuage or tenement, with the appurtenances, for the ſaid term ſo to him thereof granted as aforeſaid, the further reverſion thereof, with the appurtenances belonging, to the ſaid V. L. his heirs, and aſſigns, and being ſo thereof poſſeſſed, and the ſaid further reverſion thereof, with the appurtenances belonging as aforeſaid, afterwards, to wit, on, &c. at, &c. by a certain indenture of releaſe then and there made between the ſaid V. L. of the one part, and the ſaid J. V. of the other part (the one part of which ſaid laſt-mentioned indenture, ſealed with the ſeal of the ſaid V. L. he the ſaid J. V. now brings into court here, the date whereof is the ſame day and year laſt aforeſaid), the ſaid V. L. for the conſiderations therein mentioned, releaſed the ſaid further reverſion, with the appurtenances, of and in the ſaid laſt-mentioned meſſuage or tenement, with the appurtenances (amongſt other premiſes), to the ſaid J. V. to have and to hold the ſame to the ſaid J. V. his heirs, and aſſigns, to the uſe and behoof of him the ſaid J. V. his heirs, and aſſigns, for ever, as by the ſaid indenture of releaſe (relation being thereunto had) may more fully appear, by means whereof the ſaid J. V. became and was, and from thence hitherto hath been and ſtill is ſeiſed in his demeſne as of fee of and in the ſaid reverſion of and in the ſaid laſt-mentioned meſſuage and premiſes, with the appurtenances, to wit, at, &c. laſt aforeſaid: And although the ſaid J. V. always from the time of the making of the ſaid indenture of releaſe, until the end and expiration of the aforeſaid demiſed term of twenty-one years, well and truly performed and fulfilled all things contained in the ſaid indenture of leaſe between the ſaid V. L. and the ſaid T. M. on the part and behalf of the ſaid V. L. and his aſſigns to be done and performed according to the force and effect of the ſaid indenture; yet proteſting that the ſaid T. M. did not, after the making of the ſaid indenture of releaſe, perform or fulfil any thing in the ſaid indenture of leaſe between the ſaid V. L. and the ſaid T. M. contained on the part and behalf of the ſaid T. M. and his aſſigns to be done and performed according to the force and effect of the ſaid indenture, he the ſaid J. V. in fact ſaith, that after he ſo became ſeiſed of the ſaid reverſion of and in the ſaid laſt-mentioned meſſuage or tenement, with the appurtenances (part and parcel of the aforeſaid demiſed premiſes), and during the continuance of the ſaid term of twenty-one years, to wit, on, &c. the ſaid laſt-mentioned meſſuage, together with the ſaid outhouſes, &c. thereto belonging, was and were out of repair, ruinous, and in great decay in the walls, &c. and the ſaid ſeveral premiſes ſo being out of repair, ruinous, and in decay, foul, and choaked up, ſtopped up, and obſtructed for want of needful and neceſſary repair, &c. thereof, and in various other parts and particulars thereof, for

want of needful and neceſſary repairs and amendments thereof, and the drains, gutters, and water-courſes thereof, and thereto belonging, were ſtopped up, and obſtructed, filled up, and choaked for want of needful and neceſſary cleanſing and ſcouring thereof, and the ſaid ſeveral premiſes ſo being out of repair, ruinous, and in decay, foul, and choaked up, &c. for want of needful and neceſſary repairing and amending, &c. thereof, he the ſaid T. M. ſuffered and permitted the ſame to be and continue ſo out of repair, ruinous, and in decay, foul, and choaked up, ſtopped up, and obſtructed from thence until the end and expiration of the ſaid demiſed term, and at the end and expiration thereof, to wit, on, &c. left and yielded up the ſaid laſt-mentioned premiſes to the ſaid J. V. ſo out of repair, ruinous, and in decay, foul, and choaked up, &c. contrary to the tenor and effect of the ſaid indenture of leaſe to the ſaid J. M. and of the ſaid covenant of him the ſaid J. M. in that behalf made as aforeſaid: And the ſaid J. V. in fact further ſaith, that the ſaid T. M. did not, at the expiration of the aforeſaid demiſe, peaceably and quiety leave, ſurrender, and yield up the poſſeſſion of the ſaid laſt-mentioned premiſes unto him the ſaid J. V. as aforeſaid, with the wainſcots, and other things fixed to the freehold thereof, and ſuch other things as were mentioned and expreſſed in the ſaid ſchedule or inventory ſo intended to be made as aforeſaid, and which was accordingly made and indorſed on the ſaid indenture of leaſe to the ſaid T. M.; but on the contrary, the ſaid J. V. ſays, at the time of the ſaid T. M. ſo ſurrendering and yielding up the poſſeſſion of the ſaid laſt-mentioned premiſes as aforeſaid, certain of the wainſcots, &c. and other things of and belonging to the ſaid premiſes, and fixed to the freehold thereof, and alſo certain other things mentioned and contained in ſuch ſchedule or inventory as aforeſaid, and of and belonging to the ſaid laſt-mentioned premiſes, to wit, &c. of and belonging to the ſaid laſt-mentioned dwelling houſe, two locks, &c. of a large value, to wit, of the value of fifty pounds, had been and were removed and taken away from and off the ſaid premiſes, and were wanting and deficient, and the ſaid T. M. at the end of the ſaid term left and yielded up the ſaid laſt-mentioned premiſes ſo as aforeſaid, to the ſaid J. V. as aforeſaid, without ſuch things as had been and were ſo removed and taken away as aforeſaid, contrary to the tenor and effect of the aforeſaid indenture of leaſe to the ſaid T. M. and his covenant in that behalf made as aforeſaid, whereby, and by reaſon of which ſaid ſeveral premiſes, he the ſaid J. V. hath been forced and obliged to lay out and expend a large ſum of money, to wit, &c. in and about the repair and reinſtating ſaid laſt-mentioned premiſes and things, and to render the ſame premiſes tenantable, to wit, at, &c.; and ſo the ſaid J. V. ſays, that the ſaid T. M. although often requeſted, hath not kept the ſaid covenant ſo by him made with the ſaid V. L. and his aſſigns as aforeſaid, but hath broken the ſame, and to keep the ſame with him the ſaid J. V. hath wholly refuſed, &c. to the ſaid J. V.'s damage of two hundred pounds; and therefore he, &c.

V. LAWES.

And now at this day, that is to ſay, on Monday next, after the Morrow of All Souls, until which day the ſaid T. had leave to imparl to the ſaid bill, and then to anſwer the ſame, &c. at which day, before our ſaid lord the king, at Weſtminſter, comes as well the ſaid J. by his ſaid attorney, as the ſaid T. by C. Hobſon, his attorney, and the ſaid T. defends the wrong and injury, when, &c. and as to the ſuppoſed breach of covenant in the ſaid declaration firſt above aſſigned, ſays, that the ſaid J. ought not to have or maintain his ſaid action thereof againſt him the ſaid T. becauſe he ſays, that after the ſaid J. became ſeiſed of the ſaid reverſion of and in the ſaid laſt-mentioned meſſuage or tenement, with the appurtenances, part and parcel of the aforeſaid demiſed premiſes, and during the continuance of the ſaid term of twenty-one years, the ſaid laſt-mentioned meſſuage, together with the outhouſes, &c. thereto belonging, were not out of repair, &c. in the ſeveral particulars in the ſaid ſuppoſed firſt breach of covenant mentioned, or in any of them, nor were the ſame at the end and expiration of the ſaid term of twenty-one years left and yielded up to the ſaid J. V. ſo out of repair, &c. contrary to the covenant of the ſaid T. in that behalf made, in manner and form as the ſaid J. in his ſaid ſuppoſed breach of covenant firſt above aſſigned hath alledged, and of this the ſaid T. puts himſelf upon the country, and the ſaid J. does the like, &c: And as to the ſaid ſuppoſed breach of covenant in the ſaid declaration laſtly above aſſigned, the ſaid T. ſays, that the ſaid J. ought not to have or maintain his ſaid action thereof againſt him the ſaid T. becauſe he ſays, that at the expiration of the aforeſaid demiſe, the ſaid meſſuage and premiſes ſo aſſigned to him the ſaid J. as aforeſaid, together with the wainſcots and other things fixed to the freehold thereof, and ſuch other things belonging to the ſaid laſt mentioned meſſuage and premiſes, as are mentioned and expreſſed in the ſaid ſchedule or inventory ſo as aforeſaid made and indorſed on the ſaid indenture of leaſe, were peaceably and quietly left, ſurrendered, and yielded up to the ſaid J. as ſuch aſſignee as aforeſaid, according to the covenant of the ſaid T. in the ſaid indenture of leaſe in that behalf contained, to wit, at, &c.: And of this the ſaid T. alſo puts himſelf upon the country, and the ſaid J. doth the like; therefore as well, &c.

Plea, that at the end of the demiſe, the premiſes were not yielded up out of repair.

2d Plea, that at the end of the demiſe, defendant delivered up the premiſes with everything that was fixed to the freehold.

YORKSHIRE, *ſ.* John S. complains of J. H and W. H. being, &c. in a plea of breach of covenant: for that whereas by a certain indenture made, &c. at S. in the ſaid county of Y. between the ſaid John of the one part, and the ſaid Joſeph and W. of the other part (one part of which ſaid indenture, ſealed with the reſpective ſeals of the ſaid Joſeph and W. the ſaid John now brings into court here, the date whereof is the day and year aforeſaid),

Declaration leſſor againſt leſſees, 1ſt, cutting trees and ſtubbing underwood the garden hedge; 2d, under-letting premiſes to one N. R. during whoſe occupation great waſte was committed by a main beam be taken away from the barn, and a cow-houſe converted into a blackſmith's ſhop; 3dly, for not repairing.

aforeſaid), he the ſaid John did grant, demiſe, and to farm-let unto the ſaid Joſeph and William, all that his the ſaid John's meſſuage and tenement of Holme Park, with the appurtenances thereunto belonging (except the old houſe and the pinfold which the ſaid John reſerved for his own uſe), ſituate, lying and being in &c. together with all and ſingular houſes, &c. whatſoever to the ſaid meſſuage and tenement belonging, or in any wiſe appertaining (except as before excepted), to have and to hold the ſaid meſſuage and tenement with the appurtenances (except as before) unto the ſaid Joſeph and William, from, &c. then next enſuing the date hereof, for and during unto the full end and term of nine years from thence next enſuing, and fully to be complete and ended, at and under the yearly rent or ſum of fifty pounds of lawful money of Great Britain, payable as in the ſaid indenture is mentioned: And the ſaid Joſeph and William, for themſelves and each of them, did by the ſaid indenture covenant, promiſe and agree to and with the ſaid John, his heirs and aſſigns (amongſt other things), in manner and form following, that is to ſay, that they the ſaid Joſeph and W. ſhould not nor would cut or fell any of the trees, or otherwiſe ſtub or grub up any of the wood or underwood growing on the ſaid premiſes, and alſo ſhould not nor would let or demiſe any part of the ſaid premiſes to any perſon or perſons, but ſhould and would live thereon themſelves during the ſaid term thereby demiſed, and alſo that they the ſaid Joſeph and William ſhould and would keep in good, ſufficient, and tenantable repair during the ſaid term, all and ſingular the houſes, outhouſes, &c. and ſufficiently glaze all and every the glaſs windows belonging to the ſaid premiſes, with ſuch glaſs as the ſame were then glazed with, and ſcour and cleanſe all the ditches and watercourſes on the ſaid premiſes, and ſhould and would leave the ſame well and ſufficiently repaired, glazed, ſcoured, and cleanſed at their own proper coſts and charges at the end of the ſaid term, as by the ſaid indenture, reference being thereto had, will (amongſt other things) more fully and at large appear; by virtue of which ſaid demiſe the ſaid Joſeph and William afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes with the appurtenances, and was poſſeſſed thereof for the term to them thereof granted; and although the ſaid John always, ſince the making of the ſaid indenture, hitherto hath well and truly performed and fulfilled all things in the ſaid indenture contained on his part and behalf to be performed and fulfilled, according to the form and effect of the ſaid indenture; yet proteſting that the ſaid Joſeph and William have not performed or fulfilled any thing in the ſaid indenture contained on their part and behalf to be done, performed, fulfilled, and kept: In fact the ſaid John ſays, that after the commencement of the ſaid term, and during the continuance of the ſame, and before the exhibiting the bill of the ſaid John againſt the ſaid Joſeph and William, to wit, on, &c. they the ſaid Joſeph and William wrongfully cut, felled, and cauſed and procured to be wrongfully cut and felled divers, to wit, forty trees

Fact, Stubbing up garden hedge.

trees, then growing, ſtanding, and being in and upon the ſaid demiſed premiſes, and alſo then and there wrongfully ſtubbed and grubbed up, burnt, conſumed, damaged and ſpoiled, and cauſed and procured to be wrongfully ſtubbed and grubbed up, burnt, conſumed, damaged and ſpoiled, a large quantity of the underwood growing and being upon the ſaid demiſed premiſes, that is to ſay, a certain hedge or fence of and belonging to a certain garden belonging to the ſaid meſſuage in the ſaid indenture mentioned, contrary to the tenor and effect, intent and meaning of the ſaid indenture, and of the covenant of the ſaid Joſeph and William in that behalf made as aforeſaid, and in breach and violation thereof, to wit, at, &c.: And the ſaid John in fact further ſaith, that the ſaid Joſeph and William did not live upon the ſaid premiſes to them demiſed aforeſaid themſelves, during the ſaid term ſo to them thereof demiſed as aforeſaid, but on the contrary the ſaid John ſaith, that after the commencement of the ſaid term, and during the continuance thereof, and before the exhibiting the bill of the ſaid John, to wit, on, &c. at, &c. let and demiſed the ſaid premiſes ſo to them demiſed as aforeſaid, with the appurtenances, unto one N. R. who under and by virtue of ſuch demiſe to him entered into and became, and was poſſeſſed of the ſaid premiſes with the appurtenances, contrary to the form and effect of the aforeſaid indenture, and of the covenant of the ſaid Joſeph and William in that behalf made as aforeſaid, and whereby, and in conſequence thereof great waſte and ſpoil, dilapidation and deſtruction took place and enſued upon the ſaid premiſes by and during the occupation of the ſaid N. R. that is to ſay, in the ſeveral and reſpective inſtances following, to wit, in this, that during ſuch occupation of the ſaid premiſes by the ſaid N. R. a certain main beam or balk of and belonging to a certain barn or building in and upon the ſaid demiſed premiſes, and part and parcel thereof, was wrongfully pulled and taken down and removed from thence, ſo that thereby the ſaid barn was and is greatly weakened, maged, and injured, and alſo in this, to wit, that during the ſaid occupation of the ſaid demiſed premiſes by the ſaid N. R. a certain cow houſe in and upon the ſaid demiſed premiſes, and part and parcel thereof, was wrongfully converted and turned into, and ſtill remains and continues a building appropriated and applicable to other and different purpoſes, to wit, a blackſmith's ſhop, and the trade and buſineſs of a blackſmith, was, and ever ſince hath been, and ſtill is, exerciſed and carried on therein, to the great damage and injury of the ſame, and the eſtate and intereſt of the ſaid John therein, to wit, at, &c.: And the ſaid John further ſays, that the ſaid Joſeph and William have not, ſince the commencement of the ſaid term ſo to them demiſed as aforeſaid, kept in good, ſufficient, and tenantable repair, all and ſingular the houſes, &c. nor have they ſufficiently glazed all and every the glaſs-windows to the ſaid premiſes ſo to them demiſed as aforeſaid, and ſcoured and cleanſed all the ditches and water-courſes on the ſaid premiſes, but on the contrary thereof the ſaid John ſaith, that during the ſaid

2d, Underletting, &c.

3d, Not repairing.

term, to wit, on, &c. the ſaid demiſed meſſuage, barns, and other the premiſes aforeſaid, were, and from thence hitherto have been, and ſtill are ruinous, out of repair, and in decay in the walls, beams, &c. thereof, and in other parts and particulars thereof, and in all and every the gates, locks, &c. thereof, for want of good, ſufficient, and tenantable repair, and needful and neceſſary repairing, upholding, and amending thereof; and in particular the ſaid John ſaith, that a certain main-beam timber or balk of and belonging to a certain other barn or building, part and parcel of the aforeſaid demiſed premiſes, had been and was, upon the day and year laſt aforeſaid, and ſtill is wrongfully taken down and removed from thence, and a certain other cow-houſe, or part and parcel of the ſaid demiſed premiſes had been and was converted and turned into a building for other and different purpoſes, to wit, into a blackſmith's ſhop, to the great damage and injury of the ſaid ſeveral laſt-mentioned buildings, and the eſtate and intereſt of the ſaid John therein, contrary to the form and effect of the ſaid indenture, and of the ſaid covenants of the ſaid Joſeph and William in that behalf made as aforeſaid, to wit, at, &c. And whereas by a certain other indenture made, &c. at, &c. between the ſaid John of the one part, &c. (as in 1ſt Count, till you come to the covenants, except in this, that the demiſe is ſtated to be to the defendants, and "*their executors, adminiſtrators, and aſſigns,*" and the covenants are, that defendants, for themſelves, their and each of their executors, adminiſtrators and aſſigns, did, and each of them did, by the ſaid laſt-mentioned indenture, promiſe that they ſaid defendants, their executors, adminiſtrators and aſſigns, ſhould not, &c. and agree, &c. as in 1ſt Count, omitting the covenant not to let or demiſe the premiſes, then proceed as follows): as by the ſaid laſt-mentioned indenture, reference being thereunto had, will (amongſt other things) more fully and at large appear; by virtue of which ſaid laſt-mentioned demiſe the ſaid Joſeph and William afterwards, to wit, on, &c. entered into the ſaid laſt-mentioned demiſed premiſes, with the appurtenances, and was poſſeſſed thereof for the ſaid term ſo to them thereof granted as aforeſaid, and ſo remained and continued from thence for a long time, to wit, until afterwards, to wit, on, &c. when the ſaid laſt mentioned demiſed premiſes came to and were veſted in the aforeſaid N. R. by aſſignment thereof from the ſaid Joſeph and William unto him the ſaid N. R. who then, and from thence hitherto was and hath been, and ſtill is in the poſſeſſion of the ſaid premiſes, as ſuch aſſignee of the ſaid Joſeph and William, to wit, at, &c. in, &c.: And the ſaid John further ſays, that although he the ſaid John always, ſince the making of the ſaid laſt-mentioned indenture, hitherto hath well and truly performed, &c. (as in 1ſt Count, then proceed with the breaches as follows): In fact the ſaid plaintiff ſays, that after the commencement of the ſaid laſt-mentioned term, and during the continuance of the ſame, and alſo after the aſſignment of the ſaid laſt-mentioned demiſed premiſes to the ſaid N. R. and whilſt the

2d Count, omitting the covenant not to let or aſſign the premiſes) ſtating an aſſignment to N. R. and that he cut the trees, ſtubbed up the underwood, and neglected to repair.

the ſame were ſo in the poſſeſſion of the ſaid N. R. as aforeſaid, to wit, on, &c. he the ſaid N. R. wrongfully cut and felled and cauſed and procured to be wrongfully cut, &c. divers, to wit, forty trees, then growing and being in and upon the ſaid laſt-mentioned demiſed premiſes, and alſo then and there wrongfully ſtubbed, grubbed up, burnt, conſumed, damaged and ſpoiled, and cauſed and procured to be wrongfully ſtubbed, &c. a large quantity of underwood growing and being in and upon the ſaid laſt-demiſed premiſes, that is to ſay, a certain hedge or fence of and belonging to a certain gard n belonging to the ſaid meſſuage in the ſaid laſt mentioned indenture ſpecified, contrary to the tenor and effect, intent and meaning of the ſaid laſt-mentioned indenture, and of the covenant of the ſaid Joſeph and William in that behalf made as aforeſaid, and in breach and violation thereof, to wit, at, &c.: And the ſaid John in fact further ſaith, that the ſaid N. R. hath not, ſince the aſſignment ſo to him made as aforeſaid, nor have the ſaid Joſeph and William kept in good and ſufficient repair all and ſingular the houſes, &c. nor ſufficiently glazed all and ſingular the glaſs windows to the ſaid premiſes ſo demiſed as laſt aforeſaid, and ſcoured and cleanſed all the ditches and watercourſes on the ſaid laſt-mentioned premiſes, but on the contrary thereof the ſaid John ſaith, that during the ſaid laſt-mentioned term, and whilſt the ſaid laſt-mentioned premiſes were ſo in the poſſeſſion of the ſaid N. R. as aforeſaid, to wit, on the day and year laſt aforeſaid, the ſaid laſt-mentioned demiſed meſſuage, barn, &c. were, and from thence hitherto have been, and ſtill are ruinous, out of repair, and in decay in the walls, &c. and in other parts and parcels thereof, and in all and every the gates, &c. thereof, for want of good, ſufficient, and tenantable repair, and of needful and neceſſary repairing, upholding and amending thereof; and in particular the ſaid John ſaith, that a certain main beam or balk, of and belonging to a certain other barn or building, part and parcel of the ſaid laſt-mentioned demiſed premiſes had been and was, upon the day and year laſt aforeſaid, and ſtill is wrongfully taken down and removed from thence, and a certain cow-houſe, other part and parcel of the ſaid laſt-mentioned demiſed premiſes, was and is wrongfully converted and turned into a building for other and different purpoſes, to wit, into a blackſmith's ſhop, to the great damage and injury of the ſaid ſeveral buildings, and the eſtate and intereſt of the ſaid John therein, contrary to the form and effect of the ſaid indenture, and of the covenant of the ſaid Joſeph and William in that behalf made as aforeſaid, to wit, at, &c.; and ſo the ſaid John ſays, that the ſaid Joſeph and William (although often requeſted) have not kept their covenants ſo made with the ſaid John, but have broken the ſame, and to keep the ſame with him the ſaid John have hitherto wholly refuſed, and ſtill refuſes, to wit, at, &c. to the damage of the ſaid John of one thouſand pounds; and therefore he brings ſuit, &c. V. LAWES.

Pleas to the 1st Counts 1st. that Defendants did not cut the trees or ſtub up the Underwood; 2dly, that they did not let the premiſes to N. R.; 3dly, that they did repair; 4thly, as to the breaches in the laſt Count, that the premiſes never came to N. R. by aſſignment; 5thly, as to cutting the trees in ſaid Count, that N. R. did not repair them; 6thly, as to the want of repairs; that N. R. did repair, and iſſues joined on each of the pleas.

And the ſaid Joſeph and William, by R. M. their attorney, come and defend the wrong and injury, &c. and as to the ſaid ſuppoſed breach of covenant in the ſaid firſt Count of the ſaid declaration firſt above aſſigned, ſay, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay that the ſaid Joſeph and William did not, nor did either of them cut or fell, or cauſe and procure to be cut and felled, any trees growing, ſtanding, or being in or upon the ſaid demiſed premiſes in the ſaid firſt Count of the ſaid declaration mentioned, in or upon any part thereof, or ſtub or grub up, burn or conſume, damage or ſpoil any underwood growing or being upon the ſaid demiſed premiſes, or upon any part thereof, in manner and form as the ſaid John hath above thereof complained againſt them; and of this they put themſelves upon the country, &c.; and the ſaid John doth the like: And as to the ſaid ſuppoſed breach of covenant in the ſaid firſt Count of the ſaid declaration ſecondly above aſſigned, the ſaid Joſeph and William ſay, that the ſaid John ought not to have or maintain his aforeſaid action againſt them; becauſe they ſay, that they the ſaid Joſeph and William did not let or demiſe the ſame premiſes ſo to them demiſed as aforeſaid, with the appurtenances, or any part thereof, unto the ſaid N. R. in manner and form as the ſaid John hath above thereof complained againſt them; and of this they put themſelves upon the country, &c.; and the ſaid John doth the like: And as to the ſaid ſuppoſed breach of covenant in the ſaid firſt Count of the ſaid declaration thirdly above aſſigned, the ſaid Joſeph and William ſay, that the ſaid John ought not to have or maintain his aforeſaid action thereof againſt them; becauſe they ſay, that they the ſaid Joſeph and William always, from the time of the making of the ſaid indenture hitherto have kept all and ſingular the houſes, &c. together with all the gates, ſtiles, &c. in good, ſufficient, and tenantable repair, and have, during all that time, ſufficiently glazed all and every the glaſs windows belonging to the ſaid premiſes ſo to them demiſed as aforeſaid, and ſcoured and cleanſed all the ditches and water-courſes on the ſaid premiſes according to the form and effect of their ſaid covenant in that behalf made as aforeſaid; and of this they put themſelves upon the country, &c.; and the ſaid John doth the like: And as to the ſaid ſeveral ſuppoſed breaches of covenant in the ſaid laſt Count of the ſaid declaration mentioned, the ſaid Joſeph and William ſay, that the ſaid John ought not have or maintain his aforeſaid action againſt them, becauſe they ſay, that the ſaid demiſed premiſes in the ſaid laſt Count of the ſaid declaration mentioned, did not come to or were veſted in the aforeſaid N. R. by aſſignment thereof from the ſaid Joſeph and William unto him the ſaid N. R. in manner and form as the ſaid John hath in the ſaid laſt Count of his ſaid declaration above alledged; of this the ſaid Joſeph and William put themſelves upon the country, &c.; and the ſaid John doth the like: And for a further plea in this behalf, as to the ſaid ſuppoſed breach of covenant in the ſaid laſt Count of the ſaid declaration firſt above aſſigned, the ſaid Joſeph and William, by leave of the court here

for

for this purpoſe firſt had and obtained, according to the form of the ſtatute in that caſe made and provided, ſay, that the ſaid John ought not to have or maintain his aforeſaid action againſt them; becauſe they ſay, that the ſaid N. R. did not cut or fell, or cauſe or procure to be cut or felled, any trees growing and being in or upon the ſame demiſed premiſes or any part thereof, or ſtub or grub up, burn, conſume, damage, or ſpoil, or cauſe and procure to be ſtubbed or grubbed up, burnt, conſumed, damaged, or ſpoiled, any underwood, growing or being upon the ſame demiſed premiſes, or upon any part thereof, in manner and form as the ſaid John hath above thereof complained againſt the ſaid Joſeph and William; and of this they put themſelves upon the country; and the ſaid John doth the like: And for further plea in this behalf as to the ſaid ſuppoſed breach of covenant in the ſaid laſt Count of the ſaid declaration laſtly above aſſigned, the ſaid Joſeph and William, by leave, &c. ſay, that the ſaid John *actio non*; becauſe they ſay, that the ſaid Joſeph and William always, and from the time of the making the ſaid indenture hitherto have kept all and ſingular the houſes, outhouſes, edifices, barns, ſtables, and buildings, together with all the gates, hedges, and fences, in good, ſufficient, and tenantable repair, and have, during all that time, ſufficiently glazed all and every the glaſs windows belonging to the ſaid premiſes ſo demiſed, as in the ſaid laſt Count of the ſaid declaration is mentioned, and ſcoured and cleanſed all the ditches and water-courſes on the ſaid laſt-mentioned premiſes, according to the form and effect of their ſaid covenant in that behalf made as aforeſaid; and of this they alſo put themſelves upon the country, &c.; and the ſaid John doth the like; therefore, &c. &c.

WILLIAM LAMBE.

Trinity Term, 33. Geo. 3.

EVES, GENT. *againſt* BURLTON AND ANOTHER. } HEREFORDSHIRE, to wit. Francis Eves, gent. complains of John Burlton and Thomas Burlton, being, &c. of a plea of breach of covenant; for that whereas by a certain indenture made the twelfth day of January, in the year of Our Lord 1791, at the pariſh of Eurdiſland, in the ſaid county of Hereford, between the ſaid Francis of the one part, and the ſaid John and Thomas of the other part (one part of which ſaid indenture, ſealed with the ſeal of the ſaid John and Thomas, bearing date the day and year aforeſaid, he the ſaid Francis now brings here into court): It is witneſſed that the ſaid Francis, for the conſiderations therein mentioned, did leaſe, ſet, and to farm let unto the ſaid John and Thomas, their executors, adminiſtrators, and aſſigns, all that meſſuage, tenement, or farm-houſe, with the water, corn, flour, and griſt mill, &c. together with all gardens, &c. &c. to hold the ſame demiſed premiſes unto the ſaid John and Thomas, their executors, adminiſtrators, and aſſigns, from the ſecond day of February then next enſuing the date thereof, for and during, and unto the full end and term of twenty-one years,

Declaration in covenant, leſſor againſt leſſee, for non-payment of rent and not repairing.

years, determinable at the end of the firſt five, ten, or fifteen years of the ſaid term of twenty-one, yielding and paying therefore yearly and every year during the ſaid term unto the ſaid Francis, his heirs and aſſigns, the yearly rent or ſum of one hundred and twenty-ſix pounds of lawful money of Great Britain, in manner following, that is to ſay, the ſum of twenty-four pounds on every ſecond day of May, the ſum of thirty-nine pounds on every ſecond day of Auguſt, the ſum of twenty-four pounds on every ſecond day of November, and the ſum of thirty-nine pounds on every ſecond day of February, the firſt payment thereof to begin and be made on the ſecond day of May then next enſuing the date thereof; and the ſaid John and Thomas did thereby for themſelves, and each of them for himſelf, and their and each of their executors, adminiſtrators, and aſſigns, and for every of them, covenant, promiſe, grant, and agree, to and with the ſaid F. his heirs and aſſigns, in manner following, that is to ſay, that they the ſaid John and Thomas, their heirs, executors, adminiſtrators, and aſſigns, or ſome or one of them, ſhould and would well and truly pay, and cauſe to be paid unto the ſaid F. his heirs or aſſigns, the ſaid yearly rent of one hundred and twenty-ſix pounds, at the days and times, and in ſuch manner as thereinbefore appointed for payment thereof, according to the reſervation thereof afore mentioned and the true intent and meaning of the ſaid indenture; and that they the ſaid J. and T. their executors, adminiſtrators, and aſſigns ſhould and would, at his and their own proper coſts and charges, well and ſufficiently keep in repair the ſaid meſſuage, tenement, or farm-houſe, mills, windows, cogs, rounds, and all other the outhouſes, edifices, buildings, barns, ſtables, bridges, wears, flood-gates, water-courſes, gates, rails, pales, ſtiles, hedges, ditches, and fences, of and belonging to the ſaid thereby re-leaſed premiſes from time to time, and at all times during the ſaid term, as in and by the ſaid indenture (relation being thereunto had) will amongſt other things more fully and at large appear; by virtue of which ſaid demiſe they the ſaid J. and T. afterwards, to wit, on the ſaid ſecond day of February, in the year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, entered into all and ſingular the ſaid demiſed premiſes, with the appurtenances, and became and were poſſeſſed of the ſaid term therein to them thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging to the ſaid F. his heirs and aſſigns; and the ſaid J. and T. being ſo poſſeſſed of the ſaid term as aforeſaid, and the reverſion of the ſaid premiſes ſo belonging to the ſaid F. his heirs and aſſigns as aforeſaid, he the ſaid F. ſaith, that although the ſaid Francis, from the time of the making of the ſaid demiſe hitherto hath well and truly performed and fulfilled all things in the ſaid indenture contained on the part and behalf of the ſaid F. to be performed and fulfilled, according to the true intent and meaning of the ſaid indenture, to wit, at the pariſh aforeſaid, in the county aforeſaid; yet proteſting that the ſaid J. and T. have not, nor hath hitherto either of them performed or fulfilled any thing in the

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ſaid indenture contained on their part and behalf to be performed and fulfilled; in fact the ſaid F. ſaith, that a large ſum of money, to wit, eighty-nine pounds of the rent aforeſaid, for one year and an half of the ſaid term, ending on the ſecond day of May in the year of our lord 1793, on the day and year laſt aforeſaid, became and was and ſtill is in arrear and unpaid from the ſaid J. and T. to the ſaid F. yet the ſaid J. and T. (although often requeſted) have not, nor hath either of them yet paid the ſaid F. the ſaid ſum of eighty-nine pounds or any part thereof, but they to pay the ſame to him have and hath each of them hitherto wholly refuſed, and ſtill refuſe to pay the ſame to the ſaid F. and the ſame and every part thereof ſtill remains wholly in arrear and unſatisfied to the ſaid F. contrary to the form and effect of the ſaid indenture of demiſe ſo made to the ſaid J. and T. and of their covenant ſo by them in that behalf made as aforeſaid: And the ſaid F. further in fact ſaith, that after the commencement of the ſaid demiſe, and before the commencement of this ſuit, to wit, on the firſt day of June, in the year of Our Lord 1793, and for a long time, to wit, for the ſpace of one year then elapſed, the ſaid meſſuage and tenement, with all and every the barns, ſtables, outhouſes, mills, and all and every the other part of the ſaid demiſed premiſes, were proſtrate, fallen down, choaked up, out of repair, and in decay for want of needful and neceſſary repairing and amending thereof in the coverings, roofs, tiling, ſlating, and thatching thereof, and in the timber, beams, rafters, and underpinnings thereof, and in the walls, wainſcots, ceilings, floorings, and pavements thereof, and in the doors, door-frames, and window-frames thereof, and in the walls, hedges, ditches, drains, ſewers, water-courſes, gates, ſtiles, and fences thereof, and in the cogs and rounds of the ſaid mill, and in every other part and particular part thereof; all which ſaid premiſes, ſo being out of repair, they the ſaid John and Thomas ſuffered and permitted to be and continue ſo out of repair, ruinous, and in great decay, for and during all the time aforeſaid, and from thence until the commencement of this ſuit, contrary to the form and effect of the ſaid indenture, and of the aforeſaid covenant of the ſaid John and Thomas ſo by them made with the ſaid F. in that behalf as aforeſaid; and ſo the ſaid F. ſaith, that the ſaid J. and T. have not (although often requeſted ſo to do) kept with him the ſaid F. the covenants of the ſaid J. and T. ſo by them made with the ſaid F. but they ſo to do have hitherto wholly refuſed, and ſtill refuſe ſo to do, to the damage of the ſaid F. of two hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c.

And for further plea in this behalf as to the ſuppoſed breach of covenant firſt above aſſigned, the ſaid J. and T. by leave, *factum*; &c. *actio non*; becauſe they ſay, that nothing of the ſaid ſum of one hundred and eighty-nine pounds is in arrear from the

Plea, 1ſt, riens in arrear; 3d plea, [illegible]ment of rent; 4th plea, ſet off; 5th plea, tender payment; 6th plea, to laſt breach, that premiſes are out of repair.

ſaid

ſaid J. and T. to the ſaid F. in manner and form as the ſaid F. hath above thereof complained againſt them; and of this they put themſelves upon the country; and the ſaid F. doth the like, &c: And for further plea in this behalf as to the ſaid ſuppoſed breach of covenant firſt above aſſigned, the ſaid J. and T. by like leave, &c. *actio non*; becauſe they ſay, that the ſaid J. and T. before the commencement of this ſuit, to wit, on the third day of May, in the year of Our Lord 1793, at the pariſh aforeſaid, in the county aforeſaid, paid to the ſaid F. the ſum of one hundred and eighty-nine pounds, in full ſatisfaction and diſcharge of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant mentioned, and of all the damages by the ſaid F. ſuſtained by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſaid ſum of one hundred and eighty-nine pounds, and every part thereof, which ſaid ſum of one hundred and eighty-nine pounds the ſaid F. then and there accepted and received of and from the ſaid J. and T. in full ſatisfaction of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant mentioned, and of the damages by the ſaid F. ſuſtained by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſum of one hundred and eighty-nine pounds; and this the ſaid J. and T. are ready to verify, therefore they pray judgment if the ſaid F. ought to have or maintain his aforeſaid action thereof againſt them: And for further plea in this behalf, as to a large part of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant firſt above aſſigned mentioned, to wit, the ſum of one hundred and two pounds ſix ſhillings and fourpence, the ſaid J. and T. by like leave, &c. *actio non*; becauſe they ſay, that the ſaid F. before, and at the time of the commencement of this ſuit, at the pariſh aforeſaid, in the county aforeſaid, was indebted to the ſaid J. and T. [ſet off for money paid, work and labour, and materials found, and an account ſtated); and for further plea in this behalf, as to the reſidue of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant firſt above aſſigned mentioned, the ſaid J. and T. by like leave, &c. *(actio non)*; becauſe they ſay, that they the ſaid J. and T. before the commencement of this ſuit, to wit, on the ſaid third day of May, in the year of Our Lord 1793, at the pariſh aforeſaid, in the county aforeſaid, paid to the ſaid Francis the ſaid ſum of eighty-ſix pounds thirteen ſhillings and eightpence in full ſatisfaction and diſcharge of the ſaid ſum of money in the introductory part of this plea mentioned, and of all damages by the ſaid F. ſuſtained, by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſaid ſum of money and every part thereof, which ſaid ſum of eighty-ſix pounds thirteen ſhillings and eightpence the ſaid F. then and there accepted and received of and from the ſaid J. and T. in full ſatisfaction and diſcharge of the ſaid ſum of money in the introductory part of this plea mentioned, and of all damages by the ſaid F. ſuſtained by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſaid ſum of money, and every part thereof; and this they are ready

to

to verify: wherefore they pray judgment if the ſaid F. ought to have or maintain his aforeſaid action thereof againſt them; and for further plea in this behalf, as to the ſaid breach of covenant laſtly above aſſigned, the ſaid J. and T. by like leave, &c. *(actio non)*; becauſe they ſay, that the ſaid demiſed premiſes were not, nor was any part thereof proſtrate, ruinous, fallen down, choaked up, out of repair, or in decay, in manner and form as the ſaid F. in the ſaid ſuppoſed breach of covenant laſtly above aſſigned alledged; and of this they put themſelves upon the country, and the ſaid F. doth the like. JOHN BAYLEY.

Replication to 3d plea, proteſting the defendants did not pay plaintiff the money, for replication ſays, that he did not accept it in ſatisfaction.

And the ſaid Francis, as to the ſaid plea of the ſaid John and Thomas by them thirdly above pleaded in bar, as to the ſaid breach of covenant firſt above aſſigned, ſaith, that by reaſon of any thing in that plea above alledged, he ought not to be barred from having and maintaining his ſaid action thereof againſt them, becauſe proteſting that the ſaid J. and T. did not pay to the ſaid F. the ſaid ſum of one hundred and eighty-nine pounds in full ſatisfaction and diſcharge of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant mentioned, and of all damages by the ſaid F. ſuſtained by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſaid ſum of one hundred and eighty-nine pounds as in that plea is above ſuppoſed, nevertheleſs for replication in this behalf the ſaid F. ſaith, that he did not accept and receive the ſaid ſum of one hundred and eighty-nine pounds in full ſatisfaction and diſcharge of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant mentioned, and of the damages ſuſtained by the ſaid F. by reaſon of the breach of covenant of the ſaid J. and T. as to the ſaid ſum of one hundred and eighty-nine pounds; and this the ſaid F. prays may be enquired of by the country, and the ſaid J. and T. do the like: and the ſaid F. as to the ſaid plea of the ſaid J. and T. by them fourthly above pleaded in bar, as to the ſaid part of the ſaid one hundred and eighty-nine pounds in the ſaid breach of covenant firſt above aſſigned, ſays, that notwithſtanding any thing by the ſaid J. and T. in that plea above alledged, he ought not to be barred from having and maintaining his aforeſaid action againſt him, becauſe proteſting that that plea in manner and form aforeſaid above pleaded, and the matters therein contained are not ſufficient in law to bar the ſaid F. from having and maintaining his ſaid action againſt the ſaid J. and T.; nevertheleſs for replication thereto the ſaid F. ſaith, that the ſaid F. was not nor is indebted to the ſaid J. and T. in manner and form as ſaid J. and T. have in and by their ſaid laſt mentioned plea above alledged; and this the ſaid F. prays may be enquired of by the country, and the ſaid J. and T. doth the like: and the ſaid F. as to the ſaid plea of the ſaid J. and T. by them fifthly above pleaded in bar, as to the reſidue of the ſaid ſum of one hundred and eighty-nine pounds in the ſaid breach of covenant firſt above aſſigned, ſaith, that

that the ſaid F. ought not, by reaſon of any thing in that plea above alledged, to be barred from having and maintaining his ſaid action thereof againſt him, becauſe proteſting that the ſaid J. and T. did not pay to the ſaid Francis the ſaid ſum of eighty-ſix pounds thirteen ſhillings and eightpence in full ſatisfaction and diſcharge of the ſaid ſum of money in the introductory part of that plea mentioned, and of all damages by the ſaid F. ſuſtained by reaſon of the breaches of covenant of the ſaid J. and T. as to the ſaid ſum of money, and every part thereof, as in that plea above ſuppoſed; nevertheleſs for replication in this behalf the ſaid F. ſaith, that he did not accept and receive of and from the ſaid John and Thomas the ſaid ſum of eighty ſix pounds thirteen ſhillings and eightpence in full ſatisfaction and diſcharge of the ſaid ſum of money in the introductory part of that plea mentioned, and of the damages ſuſtained by the ſaid F. by reaſon of the breaches of covenant of the ſaid John and Thomas as to the ſaid ſum of money; and this the ſaid F. prays may be enquired of by the country, and the ſaid John and Thomas do the like; therefore, &c. THO. BARROW.

END OF THE THIRD VOLUME.